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|--------|---|--|
| 2 | Kayleigh Andersen (State Bar No. 306442 kayleigh.andersen@manningkass.com | 2) |
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| 6 7 | Attorneys for Defendants, COUNTY OF SAN BERNARDINO and DEPUTY CHRISTOPHER ALFRED | |
| 8 | | DISTRICT COURT |
| 9 | | |
| 10 | CENTRAL DISTRICT OF CAL. | IFORNIA, WESTERN DIVISION |
| 11 | | |
| 12 | STEFFON BARBER, an individual, | Case No. 5:22-cv-00625-KK-DTBx |
| 13 | Plaintiff, | [District Judge, Kenly Kiya Kato, Magistrate Judge, David T. Bristow] |
| 14 | V. | |
| 15 | COUNTY OF SAN BERNARDINO, a municipal entity, and DOES 1 through 10, inclusive, | DEFENDANTS' REPLY STATEMENT OF UNCONTROVERTED FACTS IN |
| 16 | Defendant. | SUPPORT DEFENDANTS' MOTION FOR SUMMARY |
| 17 | Defendant. | JUDGMENT |
| 18 | | Indeed How Verly Vivo Vete |
| 19 | | Judge: Hon. Kenly Kiva Kato Date: 11/13/2025 Time: 9:30 a.m. |
| 20 | | Time: 9:30 a.m. Crtrm.: 3, 3 rd Floor |
| 21 | | Trial Date: 1/26/26 |
| 22 | | 1 |
| 23 | | |
| 24 | | |
| 25 | | |
| 26 | | |
| 27 | | |
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| 1 | | | |
|--|-----|--|------------------------------------|
| 2 | No. | Defendants' Uncontroverted Facts | Opposing Party's Response to |
| 3 | | and Supporting Evidence | Cited Fact and Supporting Evidence |
| $4 \parallel$ | 1 | At approximately 11:12 pm, the San | Undisputed |
| 5 | | Bernardino County Sheriff's | |
| 6 | | Dispatch Department ("Dispatch") received a call from Maria Gallo | |
| 7 | | ("Ms. Gallo") and Joseph Cocchi | |
| $_{8}\ $ | | ("Mr. Cocchi.") in Adelanto. | |
| 9 | | E D | |
| 10 | | Ex. B. Ex. D, p. 1 (23:12:53) | |
| 11 | | Ex. 5, p. 1 (25.12.55) | |
| 12 | 2 | Ms. Gallo stated that their neighbor | Objections: Hearsay (Federal Rules |
| 13 | | is "going crazy" and wouldn't let | of Evidence ("FRE") 801, 802); |
| | | them enter their residence. She said the neighbor was asking her to take | Relevance (FRE 401, 402); FRE 403. |
| 14 | | him somewhere. She was trying to | Otherwise, undisputed. |
| 15 | | park in her driveway and he keeps | |
| 16 | | trying to open her doors. | |
| 17 | | Ex. A at p. 32:4-7, 14-17 | |
| 18 | | Ex. B at 00:23-00:39; 02:47-02:51 | |
| 19 | | | |
| 20 | | ants' Response: Defendants objects to | 5 |
| 21 | | identified as a potential witness in Defal Rules of Civil Procedure Rule 26(a) | - |
| 22 | | nore, Plaintiff does not specify the reas | |
| 23 | | ial value outweighs the probative value | • |
| 24 | | | |
| 25 | 3 | Ms. Gallo stated that the neighbor lived on the same property but | Objection: Hearsay (FRE 801, 802). |
| 26 | | behind them at 12013. | Otherwise, undisputed. |
| 27 | | | , 1 |
| $\begin{bmatrix} 27 \\ 28 \end{bmatrix}$ | | Ex. B at 00:53-01:08 | |
| ۵ | | 2 | |

| 1 | | | |
|---------------|--|---|--|
| 2 | | ants' Response: Defendants objects to | 3 |
| 3 | Gallo is identified as a potential witness in Defendants' Initial Disclosures pursuant | | |
| 4 | l I | ral Rules of Civil Procedure Rule 26(a) more, Plaintiff does not specify the reas | |
| 5 | | ial value outweighs the probative value | - |
| | projucio | in three outwergns me product o three | |
| 6 | 4 | Ms. Gallo provided a description of | Undisputed. |
| 7 | | Plaintiff as a black male, last seen | |
| 8 | | wearing a white t-shirt and jeans. | |
| 9 | | Err. A at a. 24:14 21 | |
| 10 | | Ex. A at p. 34:14-21 Ex. B at 01:18-01:46 | |
| 11 | | LX. D at 01.10 01.40 | |
| 12 | 5 | Ms. Gallo then stated that he was | Objections: Hearsay (FRE 801, |
| | | taking things out of the vehicle. | 802).Relevance (FRE 401, 402); |
| 13 | | | vague and ambiguous. |
| 14 | | Ex. B at 01:58-2:00 | |
| 15 | D 0 1 | | Otherwise, undisputed. |
| 16 | | ants' Response: Defendants objects to identified as a potential witness in Def | |
| 17 | | ral Rules of Civil Procedure Rule 26(a) | |
| 18 | | nore, Plaintiff does not specify the reas | |
| 19 | prejudic | ial value outweighs the probative value | e. |
| | | | |
| 20 | 6 | Ms. Gallo stated that she believe he | Objections: Hearsay (FRE 801, 802); |
| 21 | | was possibly under the influence of | Relevance (FRE 401, 402); FRE 403 |
| 22 | | alcoholic beverages and/or drugs. | calls for speculation |
| 23 | | Ex. B at 02:27-02:30 | Disputed to the extent that Deputy |
| 24 | | | Alfred did not have any information |
| 25 | | | that Mr. Barber was under the |
| 26 | | | influence of drugs or alcohol. |
| / n II | l I | | |
| | | | "Exhibit 1" (Alfred Done) to the |
| 27 | | | "Exhibit 1" (Alfred Depo) to the Declaration of Renee V. |

| Ш. | | | |
|--------|--|---|------------------------------------|
| - [| | | Masongsong at 31:23-25. |
| | Defenda | ants' Response: Defendants objects to | Plaintiff's objections because Ms. |
| ; | Gallo is identified as a potential witness in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). | | |
| - | | nore, Plaintiff does not specify the reas | |
| | | ial value outweighs the probative value | • |
| | | | |
| | | ants object to Plaintiffs' dispute becaus | |
| | the abse | nce or presence of a genuine dispute. S | see Fed. R. Civ. P. 30(c) |
| | 7 | Ms. Gallo reported that Plaintiff had | Undisputed |
| | | a black Chevy Trailblazer. | |
| | | Ex. B at 03:30-03:37 | |
| | | Ex. D at 03.30-03.37 | |
| | 8 | Dispatch transmitted the report over | Objections: Hearsay (FRE 801, 802) |
| | | the air that Plaintiff was not letting | Relevance (FRE 401, 402); FRE 403 |
| | | Ms. Gallo and Mr. Cocchi enter their residence and that Plaintiff lives | Otherwise, undisputed. |
| | | behind Ms. Gallo and Mr. Cocchi. | Otherwise, undisputed. |
| | | | |
| | | Ex. D at p. 1 (23:12:53-23:13:58) | |
| | | Ex. E (00:15-00:30) | |
| | Defenda | ants' Response: Defendants objects to | Plaintiff's objections because |
| | | 's hearsay objection has no grounds ur | |
| | | nore, Plaintiff does not specify the reas | |
| | prejudicial value outweighs the probative value. | | |
| | 9 | Deputy Alfred copied. | Undisputed. |
| | | | |
| | | Ex. D at p. 1 (23:14:25; 2316:01) | |
| | | Ex. E (00:34) | |
| | 10 | Dispatch transmitted over the air that | Objections: Vague and ambiguous as |
| L | | 4 | <u> </u> |

Ex. E at 02:39

| | Plaintiff lives behind the reporting | to who was wearing the white shirt |
|------------|--|---------------------------------------|
| | parties and the neighbor was wearing | and jeans. |
| | white shirt and jeans. | |
| | | Otherwise, undisputed. |
| | Ex. D at p. 1 (23:14:46) | |
| | Ex. E (00:58-1:08) | |
| | | |
| 11 | Dispatch also transmitted over the air | Objections: Hearsay (FRE 801, 802); |
| | that Plaintiff was possibly | Relevance (FRE 401, 402); FRE 403; |
| | intoxicated. | calls for speculation. |
| | | - |
| | Ex. D at p. 1 (23:15:38) | Disputed to the extent that Deputy |
| | - | Alfred did not have any information |
| | | that Mr. Barber was under the |
| | | influence of drugs or alcohol. |
| | | |
| | | "Exhibit 1" (Alfred Depo) at 31:23- |
| | | 25. |
| | | |
| Defend | ants' Response: Defendants objects to | Plaintiff's objections because |
| | f's hearsay objection has no grounds ur | • |
| | more, Plaintiff does not specify the reas | |
| | cial value outweighs the probative value | |
| projection | The state of the s | |
| Defenda | ants object to Plaintiffs' dispute becaus | e the material cited do not establish |
| | ence or presence of a genuine dispute. S | |
| the dose | shee of presence of a gename dispate. | (e). |
| 12 | Shortly after 11:19 pm, Deputy | Objections: Vague and ambiguous. |
| 12 | Christopher Alfred arrived on the | Objections. Vague and ambiguous. |
| | scene. He was the first to arrive and | Otherwise undisputed that Deputy |
| | | Otherwise, undisputed that Deputy |
| | he was the only deputy to arrive. | Alfred was the only deputy on scene |
| | Ev. C at 00:27 | at the time of the shooting. |
| | Ex. C at 00:27 | |
| | Ex. D at p. 2 (23:19:45) | |

| - 11 | | | |
|--------|---------|--|-------------------------------------|
| 1 | 13 | Ms. Gallo and Mr. Cocchi who | Objections: Hearsay (FRE 801, 802); |
| $_{2}$ | | advised him that Plaintiff was | Relevance (FRE 401, 402); FRE 403. |
| _ | | threatening them and slamming his | |
| 3 | | hands on the car, striking the hood of | Undisputed. |
| 4 | | their vehicle. | |
| 5 | | | |
| | | Ex. A at p. 31:6-11 | |
| 6 | | Ex. C at 01:13-01:25; 02:14-02:15 | |
| 7 | | | |
| ا ۾ | Defende | anta! Dagnanga. Dafandanta ahiaat ta | Dlaintiff's abjections because Ms |

Defendants' Response: Defendants object to Plaintiff's objections because Ms. Gallo and Mr. Cocchi are identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). Furthermore, Plaintiff does not specify the reasons why this is not relevant or the prejudicial value outweighs the probative value.

| 14 | Mr. Cocchi told Deputy Alfred that it | Objections: Hearsay (FRE 801, 802). |
|----|---------------------------------------|-------------------------------------|
| | was our neighbor behind us. | |
| | | Otherwise, undisputed. |
| | Ex. C at 00:30-00:32 | - |
| | | |

Defendants' Response: Defendants object to Plaintiff's objection because Mr. Cocchi is identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B).

| 15 | Mr. Cocchi stated that Plaintiff might | Objections: Hearsay (FRE 801, 802); |
|----|--|-------------------------------------|
| | have a gun but did not see one. | Relevance (FRE 401, 402); calls for |
| | | speculation; FRE 403. |
| | Ex. A at p. 31:9-15 | |
| | Ex. C at 01:35-02:08 | Otherwise, undisputed. |
| | | |

Defendants' Response: Defendants object to Plaintiff's objection because Mr. Cocchi is identified as potential witnesses in Defendants' Initial Disclosures pursuant to Federal Rules of Civil Procedure Rule 26(a)(1). Fed. R. Civ. Pro. 56(c)(1)(B). Furthermore, Plaintiff does not specify the reasons why this is not relevant or the prejudicial value outweighs the probative value.

| 1 | | | |
|--|--|--|---|
| 2 | 16 | Mr. Cocchi told Deputy Alfred that | Objections: Hearsay (FRE 801, 802); |
| 3 | | they were scared. | Relevance (FRE 401, 402) |
| 4 | | Ex. C at 02:33 | Undisputed. |
| 5 | Defenda | ants' Response: Defendants object to | Plaintiff's objection because Mr. |
| 6 | | is identified as potential witnesses in D | · · |
| 7 | | t to Federal Rules of Civil Procedure R | |
| 8 | 56(c)(1) | (B). Furthermore, Plaintiff does not sp | ecify the reasons why this is not |
| 9 | relevant | or the prejudicial value outweighs the | probative value. |
| 10 | 1- | | |
| | 17 | Deputy Alfred believed that Ms. | Objections: Relevance (FRE 401, |
| 11 | | Gallo and Mr. Cocchi feared for their safety. | 402) to the extent that this is not the standard for using deadly force. |
| 12 | | sarcty. | standard for using deadily force. |
| 13 | | Ex. A at p. 31:8 | Otherwise, undisputed. |
| 14 | | - | 1 |
| - 11 | | | |
| 15 | | ant's Response: Defendant objects to | 5 |
| | Circuit I | Manual of Model Jury Instruction 9.25 | , Unreasonable Seizure of Person |
| 16 | Circuit I (Excessi | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 | , Unreasonable Seizure of Person 3 asks the trier of fact to consider, |
| 16 17 | Circuit I (Excessi inter ali | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent | Unreasonable Seizure of Person 3 asks the trier of fact to consider, posed an immediate threat to the |
| 16 | Circuit I (Excessi inter ali safety or | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) where | Unreasonable Seizure of Person 3 asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a |
| 16 17 | Circuit I (Excessi inter ali safety or reasonal | Manual of Model Jury Instruction 9.25 (ive Force) pursuant to 42 U.S.C. § 198 (a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) whole officer to believe that the suspect has | Unreasonable Seizure of Person 3 asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the |
| 16 17 18 | Circuit I (Excessi inter ali safety or reasonal | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) where | Unreasonable Seizure of Person 3 asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the |
| 16 17 18 19 | Circuit I (Excessi inter ali safety or reasonal | Manual of Model Jury Instruction 9.25 (ive Force) pursuant to 42 U.S.C. § 198 (a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) whole officer to believe that the suspect has | Unreasonable Seizure of Person 3 asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the |
| 16 17 18 19 20 21 | Circuit I (Excessinter ali safety or reasonal infliction | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) whole officer to believe that the suspect has nor threatened infliction of serious physical serious phy | Unreasonable Seizure of Person 3 asks the trier of fact to consider,] posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. |
| 16 17 18 19 20 21 22 | Circuit I (Excessinter ali safety or reasonal infliction | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) who had officer to believe that the suspect had nor threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff | Unreasonable Seizure of Person 3 asks the trier of fact to consider,] posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. |
| 16 17 18 19 20 21 22 23 | Circuit I (Excessinter ali safety or reasonal infliction | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) who had been been deceded in the suspect had not threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff Ex. A at p. 35:6-8 | Unreasonable Seizure of Person 3 asks the trier of fact to consider,] posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. |
| 16 17 18 19 20 21 22 23 24 | Circuit I (Excessinter ali safety or reasonal infliction | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) who had officer to believe that the suspect had nor threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff | Unreasonable Seizure of Person 3 asks the trier of fact to consider,] posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. |
| 16 17 18 19 20 21 22 23 | Circuit I (Excession inter alia safety or reasonal infliction 18 | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) whole officer to believe that the suspect has nor threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff Ex. A at p. 35:6-8 Ex. C at 02:34-02:40 | Unreasonable Seizure of Person asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. Undisputed. |
| 16 17 18 19 20 21 22 23 24 | Circuit I (Excessinter ali safety or reasonal infliction | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) who had officer to believe that the suspect had nor threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff Ex. A at p. 35:6-8 Ex. C at 02:34-02:40 The surface of the driveway was | Undisputed. Unreasonable Seizure of Person asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. Undisputed. |
| 16 17 18 19 20 21 22 23 24 25 | Circuit I (Excession inter alia safety or reasonal infliction 18 | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) whole officer to believe that the suspect has nor threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff Ex. A at p. 35:6-8 Ex. C at 02:34-02:40 | Unreasonable Seizure of Person asks the trier of fact to consider, posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. Undisputed. |
| 16 17 18 19 20 21 22 23 24 25 26 | Circuit I (Excession inter alia safety or reasonal infliction 18 | Manual of Model Jury Instruction 9.25 ive Force) pursuant to 42 U.S.C. § 198 a, (1) whether the [plaintiff] [decedent of the officer[s] or to others; and (2) who had officer to believe that the suspect had nor threatened infliction of serious physical Deputy Alfred walked up the driveway to talk to Mr. Plaintiff Ex. A at p. 35:6-8 Ex. C at 02:34-02:40 The surface of the driveway was | Unreasonable Seizure of Person 3 asks the trier of fact to consider,] posed an immediate threat to the ether there was probable cause for a ad committed a crime involving the ysical harm. Undisputed. Disputed to the extent that the Trailblazer was parked on a low- |

DEFENDANTS COUNTY OF SAN BERNARDINO AND DEPUTY CHRISTOPHER ALFRED'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO SEPARATE STATEMENT OF UNCONTROVERTED **FACTS**

| 1 | | Exhibits 2-3, 8 to Ex. 1 | Morales Decl. at ¶ 10. |
|----|---------|---|--|
| 2 | | | 701 70 '11 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 |
| 3 | | | The Trailblazer could not have moved as soon as the accelerator was |
| 4 | | | engaged because the rear tires |
| 5 | | | experienced a loss of traction, and |
| 6 | | | the front tires had to overcome static |
| 7 | | | friction. The surface composition created a mechanical limitation that |
| 8 | | | prevented rapid acceleration and |
| | | | restricted maximum achievable |
| 9 | | | speeds, regardless of accelerator |
| 10 | | | input. |
| 11 | | | Morales Decl. at ¶ 10. |
| 12 | Defend | ant's Response: Defendants object to | Plaintiffs' dispute because the |
| | | cited do not establish the absence or p | resence of a genuine dispute. See Fed. |
| 13 | R. Civ. | P. 56(c). | |
| 14 | | | |
| 15 | 20 | The driveway was a shared driveway | Undisputed. |
| 16 | | between Ms. Gallo and Mr. Plaintiff. | |
| | | Ex. A at p. 32:9-10 | |
| 17 | | Ex. A at p. 32.9-10 | |
| 18 | 21 | The driveway was narrow, | Disputed. |
| 19 | | equivalent to about one length of a | 1 |
| 20 | | car lane. | Deputy Alfred had ample time and |
| 21 | | F A | room to move out of the path of the |
| 22 | | Ex. A at p. 19:20-23; Exhibits 2-3, 8 to the Ex. 1. | Trailblazer. Morales Decl. at ¶ 7. |
| 23 | | | The driveway width was |
| 24 | | | approximately 15 feet and 7 inches at |
| 25 | | | the north end and 13 feet, 8 inches at |
| | | | the south end. DeFoe Decl. at ¶ 9(e); |
| 26 | | | Morales Decl. at ¶ 7. |
| 27 | | | After the shooting, the left-front tire |
| 28 | | 8 | , |

| 1 | | | of the Trailblazer was located |
|-------------|--------------|---|--|
| $_{2}\Vert$ | | | approximately 8 feet west of the |
| 3 | | | chain-link fence, and the left-rear tire |
| | | | was positioned about 6 feet west of |
| 4 | | | the same fence. |
| 5 | D 0 1 | | Morales Decl. at ¶ 9. |
| 6 | | ant's Response: Defendants object to | _ |
| 7 | | cited do not establish the absence or p P. 56(c). | resence of a genuine dispute. See Fed. |
| 8 | IX. CIV. | 1.50(c). | |
| | | | |
| 9 | 22 | In order to leave out of the driveway | Undisputed. |
| 10 | | you have to reverse because it's one | |
| 11 | | way in and one way out. | |
| 12 | | E A 40 21 50 2 E 111 2 2 5 | |
| 13 | | Ex. A at p. 49:21-50-2; Exhibits 2-5 to Ex. A. | |
| 14 | | to Ex. A. | |
| | 23 | It was dark outside and there was | Undisputed. |
| 15 | | very limited ambient lighting from | 2 |
| 16 | | the street posting. | |
| 17 | | | |
| 18 | | Ex. A at p. 14:11-19 | |
| 19 | | | |
| 20 | 24 | On one side of the driveway, to the | Disputed to the extent that there was |
| | | left (the east side) was a chain-link fence. On the other side of the | an opening, three to four feet from the stucco on the west side. |
| 21 | | driveway (the west side) was a picket | |
| 22 | | fence. | r |
| 23 | | | |
| 24 | | Ex. A at p. 48:5-13; 58:6-11; | |
| 25 | | Exhibits 3, 4 | |
| | D.C. | | D1 : ('CC 1 1' / 1 / 1 |
| 26 | | ants' Response: Defendants object to | - |
| 27 | | cited do not establish the absence or p P. 56(c). | resence of a genume dispute, see red. |
| 28 | 11. 011. | 0 | |

| 1 | | | |
|----|---|--|----------------------------------|
| 2 | 25 | Alfred used a flashlight, light source | Undisputed. |
| 3 | | illuminated between the ground and | |
| 4 | | him. | |
| 5 | | Ex. A at p: 15:1-11 | |
| 6 | 26 | The colors of the uniform of the San | Undisputed. |
| 7 | | Bernardino County Sheriff's | |
| . | | Department are a tan top and green | |
| 8 | | pants. | |
| 9 | | Ex. A at p. 56:16-57:12; Exhibit 1 to | |
| 10 | | Ex. A | |
| 11 | | Ex. G at p. 39:24-40 | |
| 12 | | | |
| 13 | 27 | Deputy Alfred dropped the face | Undisputed that this is Alfred's |
| 14 | | covering towards his neck. | testimony. |
| 15 | | Ex. A at pp. 56:25-57:12; Exhibit 1 | |
| 16 | | to the Ex. A. | |
| | 20 | | |
| 17 | 28 | Plaintiff's vehicle was parked in the | Undisputed. |
| 18 | | driveway and the front was faced south. | |
| 19 | | South. | |
| 20 | | Ex. A at p. 17:17-21; Exhibit 2 to | |
| 21 | | Ex. 1 | |
| 22 | 20 | TT1 1 | TT: 1' 41 |
| 23 | 29 | The cargo hatch was open. | Undisputed. |
| 24 | | Ex. A at p. 58:15-59:2, Exhibit 2 to | |
| 25 | | Ex. A | |
| | | Ex. G at p. 46:14-19 | |
| 26 | 20 | D 410 1 1 1 | D' 1 |
| 27 | 30 | Deputy Alfred stood approximately 10 feet from the back of Plaintiff's | Disputed. |
| 28 | | 10 feet from the back of Plantin 8 | |
| | DEFENDANTS COUNTY OF SAN BERNARDINO AND DEPUTY CHRISTOPHER ALFRED'S | | |

DEFENDANTS COUNTY OF SAN BERNARDINO AND DEPUTY CHRISTOPHER ALFRED'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO SEPARATE STATEMENT OF UNCONTROVERTED FACTS

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| vehicle. on the north side of | At the time of the first shot, Deputy |
|-------------------------------------|---------------------------------------|
| Plaintiff's vehicle when he started | Alfred was approximately 51 feet to |
| giving commands to Plaintiff. | the rear of the Trailblazer. |
| | Morales Decl. at ¶ 16. |
| Ex. A at p. 72:1-7; 35:15-24 | |
| | At the time of the last shot, Deputy |
| | Alfred was approximately 21 feet to |
| | the rear of the Trailblazer. |
| | Morales Decl. at ¶ 16. |
| | , i |

Defendants' Response: Defendant objects to Plaintiff's dispute because Morales is a mechanical engineer and is both not qualified to make this conclusion and this conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. See Fed.R.Civ.Pro. 56; FRE 702.

| 31 | Deputy Alfred stayed behind the | Disputed that |
|----|---------------------------------------|---------------|
| | Trail Blazer because in the event of | officer would |
| | fire fight or an exchange in gunfire, | tactics. |
| | Plaintiff's vehicle could serve as a | |
| | barrier. | After seeing |
| | | on, Deputy A |
| | Ex. A at p. 72:1-9. | of the way. |
| | | "Exhibit 1" (|
| | | 49:8-50:2. |
| | | |
| | | Deputy Alfre |
| | | move out of t |

nt a reasonable police d have employed these

the reverse lights come Alfred failed to step out

(Alfred Depo) at 41:1-3,

ed did not attempt to move out of the way to the left or to the right before he fired the shots. "Exhibit 1" (Alfred Depo) at 48:2-5.

A reasonable officer in Deputy Alfred's position would have immediately moved to a position of cover and formulated an effective and safe tactical plan.

| 1 | | DeFoe Decl. at ¶ 10(c). |
|----|---|--|
| 2 | | |
| 3 | | At the time of this incident, Deputy |
| 4 | | Alfred had been trained not to tactically position himself in a bad |
| | | spot, if he can avoid it, with respect |
| 5 | | to moving |
| 6 | | vehicles. |
| 7 | | "Exhibit 1" (Alfred Depo) at 11:17- |
| 8 | | 22. |
| 9 | | The reporting party did not report |
| 10 | | The reporting party did not report that they saw Mr. Barber with a |
| 11 | | weapon or that Mr. Barber said he |
| | | had a weapon. |
| 12 | | "Exhibit 1" (Alfred Depo) at 31:12- |
| 13 | | 18. |
| 14 | | Deputy Alfred pover says a gun or |
| 15 | | Deputy Alfred never saw a gun or other weapon either on Mr. Barber or |
| 16 | | in the Trailblazer at any time. |
| 17 | | "Exhibit 1" (Alfred Depo) at 13:7- |
| 18 | | 18. |
| | | 5 |
| 19 | | Based on Deputy Alfred's |
| 20 | | experience, a reporting party might state that a person has a gun in order |
| 21 | | to expedite law enforcement |
| 22 | | response, and then it often turns out |
| 23 | | that the person did not have a gun. |
| 24 | | "Exhibit 1" (Alfred Depo) at 34:1-7. |
| | | M 1 (100) 11 (1) 1 |
| 25 | Defendants' Response: Defendants object to I material cited do not establish the absence or pro- | - |
| 26 | R. Civ. P. 56(c). | resence of a genume dispute. See Fed. |
| 27 | 10. 011.1.00(0). | |

Objection: Vague and ambiguous.

Otherwise, undisputed that there was

Alfred's voice, he thought it was his

neighbor speaking. "Exhibit 2"

(Barber Depo) at 35:10-20.

To the left (east) was the chain-link

fence approximately three to four

feet away.

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27

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1

2

| | 4 | | Ex. A at p. 17:22-24; 21:8-11 | approximately four feet of room on the left side of the Trailblazer. |
|---|-----|----|---|---|
| | 6 | 33 | To the right (west) was the wall of | Objection: vague and ambiguous. |
| | 7 | | the residence, approximately three to four feet away. | Otherwise, undisputed that there was approximately four feet of room on |
| | 8 | | Todi Tool away. | the right side of the Trailblazer. |
| | 9 | | Ex. A at p. 20:17-25; 21:1-4 | |
| | 10 | 34 | Deputy Alfred gave Plaintiff verbal | Disputed to the extent that when |
| | 11 | | commands. Multiple times, he told | Deputy Alfred was attempting to |
| | 12 | | Plaintiff to come towards him and to display his hands. | contact Mr. Barber in his driveway prior to the shooting, Mr. Barber |
| | 13 | | dispitay ins fiands. | could not see Deputy Alfred. |
| | 14 | | Ex. A at p. 37:10-38:12; 39:4-10. | "Exhibit 2" (Barber Depo) to the |
| | 15 | | Ex. C at 02:39-03:02 | Declaration of Renee V. |
| | 16 | | Ex. G at p. 43:2-5; 14-17 | Masongsong at 42:6-43:9, 48:13-19. |
| l | 17 | | | Prior to the shooting, Deputy Alfred |
| l | 18 | | | did not identify himself as a police |
| | 19 | | | officer. "Exhibit 1" (Alfred Depo) at 38:20-22. |
| | 20 | | | 30.20 22. |
| | 21 | | | Mr. Barber heard a voice but did not |
| | 22 | | | see anyone in the driveway. "Exhibit 2" (Barber Depo) at 44:19- |
| | 23 | | | 45:5. |
| | 24 | | | |
| | 2.5 | | | When Mr. Barber heard Deputy |

| 1 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
|----------------|----------|--|--|
| $2 \parallel$ | material | cited do not establish the absence or p | resence of a genuine dispute. See Fed. |
| 3 | R. Civ. | P. 56(c). | |
| 4 | 35 | Disintiff did not comply and instead | Disputed to the extent that when |
| | 33 | Plaintiff did not comply and instead told Deputy Alfred to show his hands | Disputed to the extent that when Deputy Alfred was attempting to |
| 5 | | to Plaintiff and then told Deputy | contact Mr. Barber in his driveway |
| 6 | | Alfred to "back up." | prior to the shooting, Mr. Barber |
| 7 | | Timed to buck up. | could not see Deputy Alfred. |
| $_{8}\ $ | | Ex. A at p. 39:8-10. | "Exhibit 2" (Barber Depo) at 42:6- |
| | | Ex. C at 03:02-03:03 | 43:9, 48:13-19. |
| 9 | | Ex. G at p. 43:3-5 | ŕ |
| 10 | | - | Prior to the shooting, Deputy Alfred |
| 11 | | | did not identify himself as a police |
| 12 | | | officer. "Exhibit 1" (Alfred Depo) at |
| | | | 38:20-22. |
| 13 | | | |
| 14 | | | Mr. Barber heard a voice but did not |
| 15 | | | see anyone in the driveway. |
| 16 | | | "Exhibit 2" (Barber Depo) at 44:19- |
| | | | 45:5. |
| 17 | | | When Mr. Barber heard Deputy |
| 18 | | | Alfred's voice, he thought it was his |
| 19 | | | neighbor speaking. "Exhibit 2" |
| 20 | | | (Barber Depo) at 35:10-20. |
| | | | - |
| 21 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
| $22 \parallel$ | material | cited do not establish the absence or p | resence of a genuine dispute. See Fed. |
| 23 | R. Civ. | P. 56(c). | |
| 24 | 26 | DI 1 1 1 1 D 1 1 1 1 1 D 1 1 1 1 D 1 1 1 1 D 1 1 1 D 1 1 D 1 D 1 1 D 1 | |
| 25 | 36 | Plaintiff also heard Deputy Alfred | Disputed to the extent that when |
| 26 | | say "Don't reach into your vehicle" and then Plaintiff intentionally | Deputy Alfred was attempting to contact Mr. Barber in his driveway |
| | | reached into his vehicle. | prior to the shooting, Mr. Barber |
| 27 | | reached into his vehicle. | could not see Deputy Alfred. |
| • • II | | | Tours not be a spary miner. |

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| 1 | | Ex. G at p. 44 | "Exhibit 2" (Barber Depo) at 42:6- |
|--|------------------|---|---|
| 2 | | | 43:9, 48:13-19. |
| 3 | | | Prior to the shooting, Deputy Alfred |
| 4 | | | did not identify himself as a police |
| 5 | | | officer. "Exhibit 1" (Alfred Depo) at 38:20-22. |
| 6 | | | |
| 7 | | | Mr. Barber heard a voice but did not |
| 8 | | | see anyone in the driveway. |
| 9 | | | "Exhibit 2" (Barber Depo) at 44:19-45:5. |
| 10 | | | |
| 11 | | | When Mr. Barber heard Deputy |
| 12 | | | Alfred's voice, he thought it was his neighbor speaking. "Exhibit 2" |
| 13 | | | (Barber Depo) at 35:10-20. |
| | | | - ' |
| 14 | | | |
| 14 15 | | ants' Response: Defendants object to | - |
| 15 | material | cited do not establish the absence or p | Plaintiffs' dispute because the presence of a genuine dispute. <i>See</i> Fed. |
| 15 16 | material | _ | - |
| 15 16 17 | material | cited do not establish the absence or p | - |
| 15 16 17 18 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that | Disputed to the extent that when Deputy Alfred was attempting to |
| 15 16 17 18 19 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway |
| 15 16 17 18 19 20 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber |
| 15 16 17 18 19 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his commands. | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. |
| 15 16 17 18 19 20 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber |
| 15 16 17 18 19 20 21 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his commands. Ex. C at 03:04-03:08 | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. "Exhibit 2" (Barber Depo) at 42:6-43:9, 48:13-19. |
| 15 16 17 18 19 20 21 22 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his commands. Ex. C at 03:04-03:08 | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. "Exhibit 2" (Barber Depo) at 42:6-43:9, 48:13-19. Prior to the shooting, Deputy Alfred |
| 15 16 17 18 19 20 21 22 23 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his commands. Ex. C at 03:04-03:08 | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. "Exhibit 2" (Barber Depo) at 42:6-43:9, 48:13-19. Prior to the shooting, Deputy Alfred did not identify himself as a police |
| 15 16 17 18 19 20 21 22 23 24 | material R. Civ. | At approximately 11:22, Deputy Alfred called out over the radio that Plaintiff was not complying with his commands. Ex. C at 03:04-03:08 | Disputed to the extent that when Deputy Alfred was attempting to contact Mr. Barber in his driveway prior to the shooting, Mr. Barber could not see Deputy Alfred. "Exhibit 2" (Barber Depo) at 42:6-43:9, 48:13-19. Prior to the shooting, Deputy Alfred |

Mr. Barber heard a voice but did not

| 1 | | | see anyone in the driveway. |
|----|----|--|--|
| 2 | | | "Exhibit 2" (Barber Depo) at 44:19- 45:5. |
| 3 | | | 43.3. |
| 4 | | | When Mr. Barber heard Deputy |
| 5 | | | Alfred's voice, he thought it was his neighbor speaking. "Exhibit 2" |
| 6 | | | (Barber Depo) at 35:10-20. |
| 7 | | | |
| 8 | | ants' Response: Defendants object to | - |
| 9 | | P. 56(c). | presence of a genuine dispute. See Fed. |
| 10 | | | |
| 11 | 38 | Deputy Alfred ordered Plaintiff not | Disputed to the extent that when |
| 12 | | to enter his vehicle and told him to come towards him. | Deputy Alfred was attempting to contact Mr. Barber in his driveway |
| 13 | | | prior to the shooting, Mr. Barber |
| 14 | | Ex. C at 03:09-03:11 | could not see Deputy Alfred. |
| 15 | | Ex. G at p. 43:14-15; 50:18-51:2 | "Exhibit 2" (Barber Depo) at 42:6-43:9, 48:13-19. |
| 16 | | | , |
| 17 | | | Prior to the shooting, Deputy Alfred |
| 18 | | | did not identify himself as a police officer. "Exhibit 1" (Alfred Depo) at |
| 19 | | | 38:20-22. |
| 20 | | | M. D. L. |
| 21 | | | Mr. Barber heard a voice but did not see anyone in the driveway. |
| 22 | | | "Exhibit 2" (Barber Depo) at 44:19- |
| 23 | | | 45:5. |
| 24 | | | When Mr. Barber heard Deputy |
| 25 | | | Alfred's voice, he thought it was his |
| 26 | | | neighbor speaking. "Exhibit 2" |
| 27 | | | (Barber Depo) at 35:10-20. |
| 28 | | 16 | |

| 1 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
|--------|---------|---|--|
| $2 \ $ | | cited do not establish the absence or p | presence of a genuine dispute. See Fed. |
| 3 | R. Civ. | P. 56(c). | |
| 4 | | | |
| 5 | 39 | The vehicle was on and idling when | Undisputed. |
| 6 | | Plaintiff got into the car. | |
| 7 | | Ex. A at p. 67:8-10; 71:21-23; 74:1- | |
| 8 | | 10 | |
| 9 | | Ex. G at p. 46:21-47:3 | |
| 10 | 40 | Deputy Alfred was still about 10 feet | Disputed. |
| 11 | | from the back of the vehicle. | |
| 12 | | F A 4 40 22 25 | At the time of the first shot, Deputy |
| 13 | | Ex. A at p. 40:23-25. | Alfred was approximately 51 feet to the rear of the Trailblazer. |
| 14 | | | Morales Decl. at ¶ 16. |
| 15 | | | |
| | | | At the time of the last shot, Deputy |
| 16 | | | Alfred was approximately 21 feet to the rear of the Trailblazer. |
| 17 | | | Morales Decl. at ¶ 16. |
| 18 | | | " |
| 19 | 41 | Deputy Alfred believed that | Disputed that a reasonable police |
| 20 | | Plaintiff's purpose of getting into the car was to leave. | officer would have employed these tactics. |
| 21 | | car was to reave. | tactics. |
| 22 | | Ex. A at p. 40:10-14; 49:14-16. | After seeing the reverse lights come |
| 23 | | | on, Deputy Alfred failed to step out of the way. |
| 24 | | | "Exhibit 1" (Alfred Depo) at 41:1-3, |
| 25 | | | 49:8-50:2. |
| 26 | | | Domiter Alfred did not offered to |
| 27 | | | Deputy Alfred did not attempt to move out of the way to the left or to |
| 28 | | 17 | and to the following to the left of to |

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|----|----------|---|---------------------------------|
| 5 | | | tactically position l |
| 6 | | | spot, if he can avoi |
| _ | | | to moving vehicles |
| 7 | | | "Exhibit 1" (Alfred |
| 8 | | | 22. |
| 9 | | | |
| | | | A reasonable office |
| 10 | | | Alfred's position w |
| 11 | | | to a position of cov |
| 12 | | | an effective and sat |
| | | | DeFoe Decl. at ¶ 10 |
| 13 | | | |
| 14 | | | |
| 15 | D 0 1 | | 21 1 1 1 1 1 1 1 1 |
| 16 | | ants' Response: Defendants object to l | - |
| 10 | material | cited do not establish the absence or p | resence of a genuine |
| | | | |

the right before he fired the shots. "Exhibit 1" (Alfred Depo) at 48:2-5. At the time of this incident, Deputy Alfred had been trained not to himself in a bad oid it, with respect ed Depo) at 11:17er in Deputy would have moved ver and formulated afe tactical plan. 0(c).

ecause the ne dispute. See Fed. 17 || R. Civ. P. 56(c).

| 42 | Deputy Alfred observed the reverse | Disputed that a reasonable police |
|----|--|---------------------------------------|
| | lights of Plaintiff's vehicle come on. | officer would have employed these |
| | | tactics. |
| | Ex. A at p. 40:20-22 Ex. G at p. | |
| | 47:4-8 | After seeing the reverse lights come |
| | | on, Deputy Alfred failed to step out |
| | | of the way. |
| | | "Exhibit 1" (Alfred Depo) at 41:1-3, |
| | | 49:8-50:2. |
| | | |
| | | Deputy Alfred did not attempt to |
| | | move out of the way to the left or to |
| | | the right before he fired the shots. |

| 1 | | | "Exhibit 1" (Alfred Depo) at 48:2-5. |
|----|----|--|---|
| 2 | | | A reasonable officer in Deputy |
| 3 | | | Alfred's position would have |
| 4 | | | immediately |
| 5 | | | moved to a position of cover and |
| 6 | | | formulated an effective and safe |
| 7 | | | tactical plan. DeFoe Decl. at ¶ 10(c). |
| 8 | | | |
| 9 | | | At the time of this incident, Deputy |
| | | | Alfred had been trained not to |
| 10 | | | tactically position himself in a bad spot, if he can avoid it, with respect |
| 11 | | | to moving |
| 12 | | | vehicles. |
| 13 | | | "Exhibit 1" (Alfred Depo) at 11:17- |
| 14 | | | 22. |
| 15 | | | Deputy Alfred had ample time and |
| 16 | | | room to move out of the path of the |
| 17 | | | Trailblazer. |
| 18 | | | Morales Decl. at ¶ 7; DeFoe Decl. at ¶ 9. |
| 19 | | | |
| 20 | | | |
| 21 | 42 | Defendants' Response: Defendants of | |
| 22 | | the material cited do not establish the | absence or presence of a genuine |
| 23 | | dispute. See Fed. R. Civ. P. 56(c). | |
| | 43 | Deputy Alfred had no immediate | Disputed. |
| 24 | | indication that the vehicle would | |
| 25 | | reverse until Plaintiff entered it and | Defendants' Fact No. 41. |
| 26 | | the reverse lights came on. | M. C.11 1.1. (M. D. 1 |
| 27 | | Ex. A at p. 49:4-7 | Ms. Gallo stated that Mr. Barber was asking her to take him somewhere, |
| 28 | | 19 | asking her to take min some where, |
| I | 17 | | |

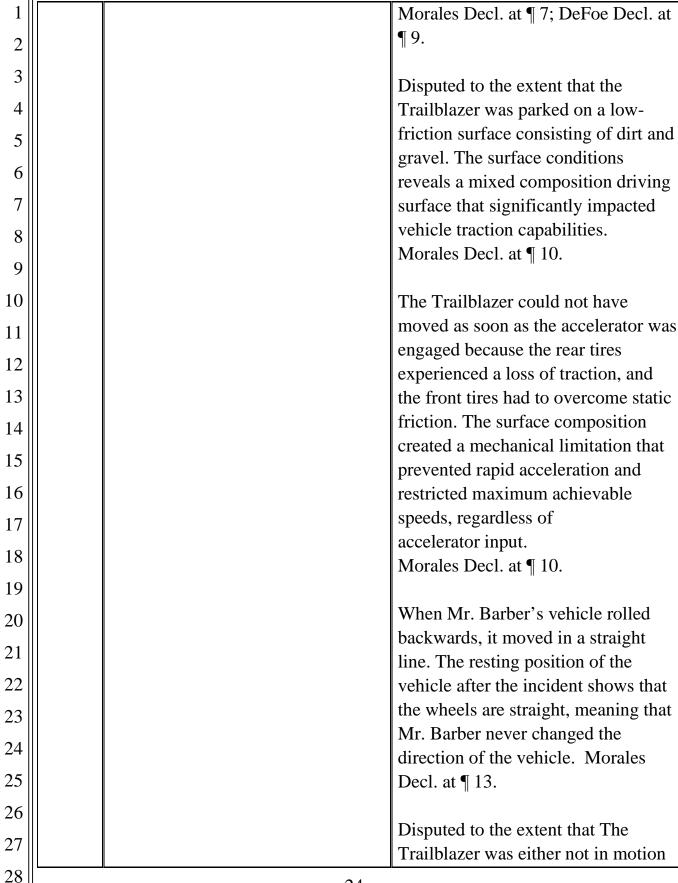
| 6 | |
|----|--|
| 7 | After seeing the reverse lights come |
| 8 | on, Deputy Alfred failed to step out of the way. |
| 9 | "Exhibit 1" (Alfred Depo) at 41:1-3, |
| 10 | 49:8-50:2. |
| 11 | Deputy Alfred did not attempt to |
| 12 | move out of the way to the left or to |
| 13 | the right before he fired the shots. |
| 14 | "Exhibit 1" (Alfred Depo) at 48:2-5. |
| 15 | A reasonable officer in Deputy |
| 16 | Alfred's position would have |
| 17 | immediately moved to a position of cover and formulated an effective |
| 18 | and safe tactical plan. |
| 19 | DeFoe Decl. at ¶ 10(c). |
| 20 | At the time of this incident, Deputy |
| 21 | Alfred had been trained not to |
| 22 | tactically position himself in a bad |
| 23 | spot, if he can avoid it, with respect to moving vehicles. |
| 24 | "Exhibit 1" (Alfred Depo) at 11:17- |
| 25 | 22. |
| 26 | Deputy Alfred had ample time and |
| 27 | room to stay out of the path of the |

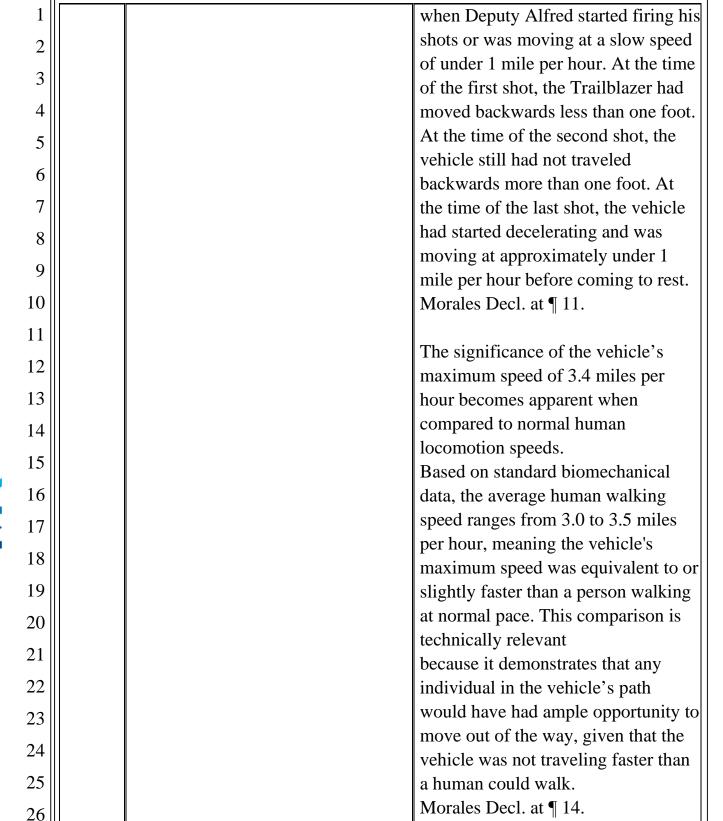
| | 8 |
|---|----|
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| | 10 |
| | 11 |
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| | 16 |
| | 17 |
| • | 18 |

| 1 | | | Trailblazer. |
|----|---------|---|--|
| 2 | | | Morales Decl. at ¶ 7. |
| 3 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
| 4 | | cited do not establish the absence or p | - |
| 5 | | P. 56(c). | |
| 6 | | | li- |
| 7 | 44 | The engine of the vehicle revved and | |
| | | then the car started moving in | to "revved." |
| 8 | | reverse. | Disputed to the extent that the |
| 9 | | Ex. A at p. 49. | Trailblazer was parked on a low- |
| 10 | | Ex. C: 03:13-03:14 | friction surface consisting of dirt and |
| 11 | | Ex. G at p. 47:4-15; 48:17-22 | gravel. The surface conditions |
| 12 | | | reveals a mixed composition driving |
| 13 | | | surface that significantly impacted |
| | | | vehicle traction capabilities. Morales Decl. at ¶ 10. |
| 14 | | | Morales Deci. at 10. |
| 15 | | | The Trailblazer could not have |
| 16 | | | moved as soon as the accelerator was |
| 17 | | | engaged because the rear tires |
| 18 | | | experienced a loss of traction, and |
| 19 | | | the front tires had to overcome static friction. The surface composition |
| 20 | | | created a mechanical limitation that |
| 21 | | | prevented rapid acceleration and |
| 22 | | | restricted maximum achievable speeds, regardless of |
| 23 | | | accelerator input. |
| 24 | | | Morales Decl. at ¶ 10. |
| | | | |
| 25 | | | Disputed to the extent that The |
| 26 | | | Trailblazer was either not in motion when Deputy Alfred started firing his |
| 27 | | | shots or was moving at a slow speed |
| 28 | | 21 | |

| 1 | | | of under 1 mile per hour. At the time |
|----|--------|---------------------------------------|---|
| 2 | | | of the first shot, the Trailblazer had moved backwards less than one foot. |
| 3 | | | At the time of the second shot, the |
| 4 | | | vehicle still had not traveled |
| 5 | | | backwards more than one foot. At |
| 6 | | | the time of the last shot, the vehicle |
| 7 | | | had started decelerating and was moving at approximately under 1 |
| 8 | | | mile per hour before coming to rest. |
| 9 | | | Morales Decl. at ¶ 11. |
| 10 | D.C. I | 11D D C 1 1 1 1 1 1 | D1 : ('CC ') 1: () 1 |
| | | ants' Response: Defendants object to | presence of a genuine dispute. See Fed. |
| 11 | | P. 56(c). | resence of a genume dispute. See I ed. |
| 12 | | • | |
| 13 | 45 | Deputy Alfred called out over the | Undisputed |
| 14 | | radio that Plaintiff was trying to | |
| 15 | | reverse. | |
| 16 | | Ex. C at 03:13-03:15 | |
| 17 | | | |
| 18 | 46 | The tires gained traction on the hard | Disputed. |
| 19 | | packed dirt. | The Trailblezer was perked on a low |
| 20 | | Ex. 2 to Ex. A. | The Trailblazer was parked on a low- friction surface consisting of dirt and |
| 21 | | Ex. C at 03:14:82- 03:16:277 | gravel. The surface conditions |
| | | | reveals a mixed composition driving |
| 22 | | | surface that significantly impacted |
| 23 | | | vehicle traction capabilities. Morales Decl. at ¶ 10. |
| 24 | | | Morates Deer, at 10. |
| 25 | | | The Trailblazer could not have |
| 26 | | | moved as soon as the accelerator was |
| 27 | | | engaged because the rear tires |
| 28 | | 22 | experienced a loss of traction, and |

| composition created a mechanical limitation that prevented rapid acceleration and restricted maximum achievable speeds, regardless of accelerator input. Morales Decl. at ¶ 10. Disputed to the extent that The Trailblazer was either not in motion | | | |
|--|---------|---------------------------------------|---|
| limitation that prevented rapid acceleration and restricted maximum achievable speeds, regardless of accelerator input. Morales Decl. at ¶ 10. Disputed to the extent that The Trailblazer was either not in motion when Deputy Alfred started firing he shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot. At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11. Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed R. Civ. P. 56(c). Deputy Alfred believed that Plaintiff's intention in reversing the vehicle was to harm him. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | | | overcome static friction. The surface |
| acceleration and restricted maximum achievable speeds, regardless of accelerator input. Morales Decl. at ¶ 10. Disputed to the extent that The Trailblazer was either not in motion when Deputy Alfred started firing he shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot. At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11. Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fee R. Civ. P. 56(c). Toputy Alfred believed that Plaintiff's intention in reversing the vehicle was to harm him. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | | | _ |
| accelerator input. Morales Decl. at ¶ 10. Disputed to the extent that The Trailblazer was either not in motion when Deputy Alfred started firing h shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11. Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed R. Civ. P. 56(c). Deputy Alfred believed that Plaintiff's intention in reversing the vehicle was to harm him. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | | | acceleration and restricted maximum |
| Morales Decl. at ¶ 10. Disputed to the extent that The Trailblazer was either not in motion when Deputy Alfred started firing h shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11. Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fee R. Civ. P. 56(c). Deputy Alfred believed that Plaintiff's intention in reversing the vehicle was to harm him. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | | | achievable speeds, regardless of |
| Disputed to the extent that The Trailblazer was either not in motion when Deputy Alfred started firing h shots or was moving at a slow speed of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one foot At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11. Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fec R. Civ. P. 56(c). Deputy Alfred believed that Plaintiff's intention in reversing the vehicle was to harm him. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | | | accelerator input. |
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| of under 1 mile per hour. At the time of the first shot, the Trailblazer had moved backwards less than one food At the time of the second shot, the vehicle still had not traveled backwards more than one foot. At the time of the last shot, the vehicle had started decelerating and was moving at approximately under 1 mile per hour before coming to rest. Morales Decl. at ¶ 11. Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fee R. Civ. P. 56(c). Deputy Alfred believed that Plaintiff's intention in reversing the vehicle was to harm him. Disputed that a reasonable police officer would have formed this belief. | | | when Deputy Alfred started firing his |
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| Plaintiff's intention in reversing the vehicle was to harm him. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | R. Civ. | P. 56(c). | |
| vehicle was to harm him. belief. Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | 47 | Deputy Alfred believed that | |
| Ex. A at p. 49:14-20 Deputy Alfred had ample time and room to move out of the path of the | | | |
| room to move out of the path of the | | vehicle was to harm him. | belief. |
| | | Ex. A at p. 49:14-20 | Deputy Alfred had ample time and |
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| $2 \parallel$ | Defends | ants' Rasnansa. Defendants object to | Plaintiffs' dispute because the |
| 3 | Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> Fed. | | |
| 4 | R. Civ. P. 56(c). | | |
| | | | |
| 5 | 48 | A couple of feet ahead of Deputy | Objections: vague and ambiguous as |
| 6 | | Alfred was an opening, three to four | to time. |
| 7 | | feet from the stucco on the west side. | |
| 8 | | Ev. A at a 52.11 14 | Disputed. |
| 9 | | Ex. A at p. 53:11-14. | Deputy Alfred had ample time and |
| 10 | | | room to move out of the path of the |
| | | | Trailblazer. Morales Decl. at ¶ 7. |
| 11 | | | " |
| 12 | | | At the time of the first shot, Deputy |
| 13 | | | Alfred was approximately 51 feet to |
| 14 | | | the rear of the Trailblazer. |
| 15 | | | Morales Decl. at ¶ 16. |
| 16 | | | At the time of the last shot, Deputy |
| | | | Alfred was approximately 21 feet to |
| 17 | | | the rear of the Trailblazer. |
| 18 | | | Morales Decl. at ¶ 16. |
| 19 | | | |
| 20 | | ants' Response: Defendants object to | - |
| 21 | | cited do not establish the absence or p P. 56(c). | bresence of a genuine dispute. See Fed. |
| 22 | K. CIV. | 1.50(c). | |
| 23 | 49 | In order to get to the opening on the | Objection: vague and ambiguous. |
| | | west side to him, Alfred would have | |
| 24 | | had to move closer to the car. | Disputed. |
| 25 | | | |
| 26 | | Ex. A at p. 60:7-16; 93:3-7; Exhibit | Danuty Alfred had ample time and |
| 27 | | 4 to Ex. A | Deputy Alfred had ample time and |

room to move out of the path of the

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| 1 | | | Trailblazer. |
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| $2 \parallel$ | | | Morales Decl. at ¶ 7; DeFoe Decl. at |
| 3 | | | ¶ 9. |
| 4 | | | At the time of the first shot Deputy |
| | | | At the time of the first shot, Deputy Alfred was approximately 51 feet to |
| 5 | | | the rear of the Trailblazer. |
| 6 | | | Morales Decl. at ¶ 16. |
| 7 | | | |
| 8 | | | At the time of the last shot, Deputy |
| 9 | | | Alfred was approximately 21 feet to |
| 10 | | | the rear of the Trailblazer. Morales Decl. at ¶ 16. |
| 11 | | | Wordies Deer. at 10. |
| | | | |
| 12 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
| 13 | material | cited do not establish the absence or p | resence of a genuine dispute. See Fed. |
| 14 | R. Civ. | P. 56(c). | |
| 15 | | | |
| 16 | 50 | Deputy Alfred fired six shots at | Undisputed. |
| 17 | | Plaintiff. | |
| | | Ex. A at p. 7:11-12; 13:5-6 Ex. B at | |
| 18 | | 03:47-49 | |
| 19 | | Ex. C at 03:16-03:19 | |
| 20 | | | |
| 21 | 51 | After Deputy Alfred's last shot, the | Disputed. |
| 22 | | truck moved back approximately one foot and stopped after making | After the shooting, Mr. Barber's foot |
| 23 | | contact with an area by the wall to | was on the brake pedal. |
| | | the west. | "Exhibit 1" (Alfred Depo) at 53:24- |
| 24 | | | 54:3. |
| 25 | | Ex. A at 44:24-45:6; 53:2-4 | |
| 26 | | | The vehicle came to a stop because |
| 27 | | | Mr. Barber stepped on the brakes. |
| 28 | | 27 | The evidence indicates that Mr. |

| 1 | | | Barber applied the brakes mildly, as |
|----|-------------|--|--|
| 2 | | | opposed to slamming on the brakes. |
| 3 | | | The vehicle gradually decelerated |
| 4 | | | after the brakes were pressed while remaining in reverse gear. |
| | | | Morales Decl. at ¶ 15. |
| 5 | | | natures Boon at 13. |
| 6 | | | When the deputies were removing |
| 7 | | | Mr. Barber from the Trailblazer after |
| 8 | | | the shooting, the Trailblazer moved |
| 9 | | | backwards an additional two to three |
| | | | feet. |
| 10 | | | Morales Decl. at ¶ 20. |
| 11 | | | |
| 12 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
| 13 | | cited do not establish the absence or p | - |
| 14 | | P. 56(c). | |
| 15 | | | |
| | | 52. Deputy Alfred called out over | Undisputed that this is Alfred's |
| 16 | | the radio that Plaintiff tried to | testimony. |
| 17 | | reverse into him and requested | |
| 18 | | medical services. | |
| 19 | | Ex. B at 03:37 Ex. C at 23:22:44 | |
| 20 | | Ex. B at 03.37 Ex. C at 23.22.44 | |
| | 53 | Plaintiff was injured in the head. | Disputed to the extent that Plaintiff |
| 21 | | Transmir was injured in the field. | was shot in the head. |
| 22 | | Ex. A at p. 52:12-13 | |
| 23 | | Ex. G at p. 52:18-22 | |
| 24 | | | |
| 25 | <i>7.</i> 4 | D (1) | TT 1' . 1 |
| 26 | 54 | Because the car was in reverse gear, once Plaintiff was extracted from the | Undisputed. |
| | | vehicle for medical services, the | |
| 27 | | vehicle slowly went in reverse | |
| 28 | | venicle slowly went in reverse | |

| | | because it was in reverse gear and one of Deputy Alfred's partners placed it park to stop the vehicle from reversing. | |
|---|--|--|--|
| | | Ex. A at p. 52:18-23; 53:24-54:3 Ex. C at 09:27-09:30 | |
| | 55 | Plaintiff was arrested and booked for PC 245(c), assault with a deadly weapon on a peace officer. Ex. F | Disputed to the extent that Mr. Barber was not convicted of this offence. "Ex. I." |
| Defendants' Response: Defendants object to Plaintiffs' dispute becamaterial cited do not establish the absence or presence of a genuine di R. Civ. P. 56(c). | | - | |
| | 56 | Plaintiff was charged with the attempted murder of Deputy Alfred and Penal Code section 245(a) and convicted of Penal Code 245(a). Ex. H; Ex. K | Disputed to the extent that Mr. Barber was charged with attempted murder of a peace officer, but was unanimously found not guilty by jurors. "Ex. I." |
| | Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. <i>See</i> R. Civ. P. 56(c). | | _ |
| | 57 | Plaintiff was sentenced to 14 years. Ex. I | Disputed to the extent that Mr. Barber's sentencing included a prior and unrelated probation violation regarding an assault on a peace officer. Mr. Barber was found not guilty on attempted murder and assault on a peace officer as it relates |

| 1 | | | to Deputy Alfred. |
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| $_{2}$ | | | "Ex. I." |
| 3 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the |
| | | cited do not establish the absence or p | presence of a genuine dispute. See Fed. |
| 4 | R. Civ. | P. 56(c). | |
| 5 | | | |
| 6 | 58 | Deputy Alfred received training at | Undisputed. |
| 7 | | the San Bernardino County Sheriff's | Chaispatea. |
| 8 | | Academy for use of force, including | |
| 9 | | use of deadly force, the policy | |
| | | related to the use of deadly force, | |
| 10 | | and the policy related to shooting at | |
| 11 | | moving vehicles. | |
| 12 | | Ex. A, p. 10:2-13:4; | |
| 13 | | 23:23-26:1; 89:14-92:12 | |
| 14 | | | |
| 15 | 59 | Deputy Alfred has used the firearm | Undisputed. |
| | | in the field before the date of the | |
| 16 | | April 27, 2021 shooting. | |
| 17 | | F A 25 25 20 17 | |
| 18 | | Ex. A, p. 25:25-29:17 | |
| 19 | 60 | The San Bernardino County Sheriff's | Undisputed that this is the County |
| 20 | | Department Manuel provides that | Policy. |
| 21 | | "[t]he 'reasonableness' of the force | |
| | | used shall be evaluated from the | Disputed to the extent that at the time |
| 22 | | perspective of a reasonable safety | of this incident, Deputy Alfred |
| 23 | | member in the same situation, based | understood that the County of San |
| 24 | | on the totality of the circumstances | Bernardino's policy directed that |
| 25 | | known or perceived by the safety member at the time, rather than with | deputies "shall not" shoot at a moving vehicle. |
| 26 | | the benefit of hindsight. The totality | moving venicie. |
| 27 | | of the circumstances shall account | "Exhibit 1" (Alfred Depo) at 10:14- |
| | | for occasions when safety members | 11:22. |
| 28 | DET | 30 ENDANTS COUNTY OF SAN BERNARDINO AN | ID DEDIVEY CHDICEODHED AT EDEDIC |

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| 1 | | may be forced to make quick |
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| 2 | | judgments about using force, and the |
| 3 | | amount of force that is necessary, in circumstances that are tense, |
| 4 | | uncertain and rapidly evolving." |
| 5 | | E 1 (COGD00077) |
| 6 | | Ex. L at COSB000672- COSB000673. |
| 7 | | |
| | D C 1 | D.C. 1. (1. D. '.'.'CC.' 1' (1 (1. |

Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c).

The San Bernardino County Sheriff's Undisputed that this is the County 61 Department Manuel provides that the Policy. evaluation of whether a deputy has used reasonable force shall take into a consideration a number of factors including, but not limited to "behavior of the individual being confronted (as reasonably perceived by [him] at the time"; "[t]he availability of options (what resources are reasonably available to the deputy under the circumstances); "[t]he training and experience of the deputy"; "[t]he potential for injury to citizens, [and himself]"; and "[t]he risk of escape."

Ex. L at COSB000673-4.

Disputed to the extent that at the time of this incident, Deputy Alfred understood that the County of San Bernardino's policy directed that deputies "shall not" shoot at a moving vehicle.

"Exhibit 1" (Alfred Depo) at 10:14-11:22.

Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c).

| 62 | The San Bernardino County Sheriff's | Undisputed that this is the County |
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| | Department Manuel provide that | Policy. |
| | "[a]lternatives to force are not | |
| | required by a member when the | Disputed to the extent that at the time |
| | member reasonably believes that | of this incident, Deputy Alfred |
| | immediate action must be taken to | understood that the County of San |
| | prevent injury to themselves, another | Bernardino's policy directed that |
| | member of public." | deputies "shall not" shoot at a |
| | | moving vehicle. |
| | Ex. L at COSB000675. | |
| | | "Exhibit 1" (Alfred Depo) at 10:14- |
| | | 11:22. |
| | | |
| | | Disputed to the extent that Deputy |
| | | Alfred had ample time and room to |
| | | move out of the path of the |
| | | Trailblazer rather than shooting. |
| | | Morales Decl. at ¶ 7; DeFoe Decl. at |
| | | ¶ 9. |
| | | |

Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c). Defendant also objects because Morales is a mechanical engineer

| | and is both not qualified to make this conclusion and this conclusion is the result of | | | |
|----|--|--|---|--|
| | the unre | the unreliable application of the facts, ignoring direct evidence to the contrary. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702. Defendant further objects because DeFoe's conclusion | | |
| | Fed.R.C | | | |
| | is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and | | | |
| | | | | |
| ۱ | 704. | | | |
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| | 63 | The San Bernardino County Sheriff's | Undisputed that this is the County | |
| | | Department Manuel provides "[a] | Policy. | |
| | | safety member may use lethal force | | |
| | | to protect himself or others from | Disputed to the extent that at the time | |
| | | what he reasonably believes to ben | of this incident, Deputy Alfred | |
| | | an immediate threat of death or | understood that the County of San | |
| | 32 | | | |
| II | DEFENDANTS COUNTY OF SAN RERNARDING AND DEPUTY CHRISTOPHER ALFRED'S | | | |

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Bernardino's policy directed that serious bodily injury ... [or] to accomplish the arrest or prevent the deputies "shall not" shoot at a moving vehicle. escape of a suspected felon, when "Exhibit 1" (Alfred Depo) at 10:14the member has probable cause to believe that the suspect poses a 11:22. significant threat of death or serious bodily injury to the deputy of Disputed to the extent that Deputy others." Alfred had ample time and room to move out of the path of the Trailblazer rather than shooting. Ex. L at COSB000676. Morales Decl. at ¶ 7; DeFoe Decl. at ¶ 9. Disputed to the extent that the time of the shooting, Deputy Alfred had no information that Mr. Barber had ever physically injured anyone. "Exhibit 1" (Alfred Depo) at 30:18-20.

Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c). Defendant also objects because Morales is a mechanical engineer and is both not qualified to make this conclusion and this conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. See Fed.R.Civ.Pro. 56; FRE 702. Defendant further objects because DeFoe's conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. See Fed.R.Civ.Pro. 56; FRE 702 and 704.

| L | | | |
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| | 64 | The San Bernardino County Sheriff's | Undisputed that this is the County |
| | | Department Manuel provides that | Policy. |
| | | "[f]irearms should not be discharged | |
| | | from or at a moving vehicle except | |
| | | in exigent circumstances. In these | Disputed to the extent that at the time |
| | | situations, a safety member must | of this incident, Deputy Alfred |
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have articulable reason(s) for this use understood that the County of San of lethal force, which include, but are Bernardino's policy directed that not limited to ... [t]he vehicle is operated in a manner which is likely to result in great bodily injury or death to a safety member or another person, and other reasonable means of defense have been exhausted, or are not available or practical. This may include, if time and circumstances allow, moving out of the path of the vehicle."

Ex. L at COSB000677-8.

deputies "shall not" shoot at a moving vehicle.

"Exhibit 1" (Alfred Depo) at 10:14-11:22.

Disputed to the extent that police officers are trained that a threat of death or serious injury is imminent when, based upon the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately cause death or serious bodily injury to the peace officer or another person.

DeFoe Decl. at \P 6(c) (citing PC 835a); "Exhibit 1" (Alfred Depo) at 91:4-13.

Disputed to the extent that police standards instruct that subjective fear alone does not justify the use of deadly force. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that from appearances, must be instantly confronted and addressed. DeFoe Decl. at \P 6(d).

| Defenda | Defendants' Response: Defendants object to Plaintiffs' dispute because the | | |
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| material | material cited do not establish the absence or presence of a genuine dispute. See Fed. | | |
| R. Civ. | R. Civ. P. 56(c). Defendant further objects because DeFoe's conclusion is the result | | |
| of the u | of the unreliable application of the facts, ignoring direct evidence to the contrary and | | |
| invades | invades the province of the jury. See Fed.R.Civ.Pro. 56; FRE 702 and 704. | | |
| | 1 5 5 | · | |
| 65 | Alfred's understanding of training is | Disputed to the extent that at the time | |
| | if feasible, step out of the way, rather | of this incident, Deputy Alfred | |
| | than shooting at the vehicle. | understood that the County of San | |
| | | Bernardino's policy directed that | |
| | Ex. A at p. 48:20-25 | deputies "shall not" shoot at a | |
| | - | moving vehicle. | |
| | | "Exhibit 1" (Alfred Depo) at 10:14- | |
| | | 11:22. | |
| | | | |
| | | Otherwise, undisputed. | |

Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c).

| 66 | Deputy Alfred was approximately 10 | Disputed. |
|----|---------------------------------------|---------------------------------------|
| | to 15 feet behind Plaintiff's vehicle | |
| | as he fired the shots. | At the time of the first shot, Deputy |
| | | Alfred was approximately 51 feet to |
| | Ex. A at p. 14:5-7; 15:1216:1. | the rear of the Trailblazer. |
| | | Morales Decl. at ¶ 16. |
| | | |
| | | At the time of the last shot, Deputy |
| | | Alfred was approximately 21 feet to |
| | | the rear of the Trailblazer. |
| | | Morales Decl. at ¶ 16. |
| | | |
| | | Disputed to the extent that Deputy |
| | | Alfred had ample time and room to |
| | | move out of the path of the |
| | | Trailblazer rather than shooting. |

| - | | | |
|---|---|--|--------------------------------------|
| . | | | Morales Decl. at ¶ 7; DeFoe Decl. at |
| 2 | | | ¶ 9. |
| ; | | | |
| - | Defendants' Response: Defendants object to Plaintiffs' dispute because the | | |

material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c). Defendant also objects because Morales is a mechanical engineer and is both not qualified to make this conclusion and this conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. See Fed.R.Civ.Pro. 56; FRE 702. Defendant further objects because DeFoe's conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. See Fed.R.Civ.Pro. 56; FRE 702 and 704.

| 67 | Deputy Alfred observed movements | Objections: Vague as to time. |
|----|----------------------------------|--|
| | consistent with someone who's | |
| | armed with a firearm. | Disputed. |
| | | |
| | Ex. A at p. 13:10 | The reporting party did not report |
| | | that they saw Mr. Barber with a |
| | | weapon or that Mr. Barber said he |
| | | had a weapon. "Exhibit 1" (Alfred |
| | | Depo) at 31:12-18. |
| | | |
| | | Deputy Alfred never saw a gun or |
| | | other weapon either on Mr. Barber or |
| | | in the Trailblazer at any time. |
| | | "Exhibit 1" (Alfred Depo) at 13:7- |
| | | 18. |
| | | D 1 D 4 A16 12 |
| | | Based on Deputy Alfred's |
| | | experience, a reporting party might |
| | | state that a person has a gun in order |
| | | to expedite law enforcement |
| | | response, and then it often turns out |
| | | that the person did not have a gun. |

| 1 | | | "Exhibit 1" (Alfred Depo) at 34:1-7. | |
|-----|--|---|---|--|
| 2 | Defenda | ants' Response: Defendants object to | Plaintiffs' dispute because the | |
| 3 | material | cited do not establish the absence or p | resence of a genuine dispute. See Fed. | |
| 3 | R. Civ. | P. 56(c). | | |
| 4 | | _ | | |
| 5 | 68 | Plaintiff did not attend therapy or | Disputed to the extent that there is no | |
| 6 | | counseling. or take any medication | evidence that Mr. Barber had the | |
| | | for any mental or emotional types of | opportunity to attend therapy or | |
| / | | injuries. | counseling or take any medication | |
| 8 | | | for any mental or emotional types of | |
| 9 | | Ex. G at 65:1-6; 65:23-66:7 | injuries, given that he has | |
| 10 | | | incarcerated after the shooting. | |
| 11/ | The 1 4 The 1 4 The 4 CC 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 1 4 4 | | | |

Defendants' Response: Defendants object to Plaintiffs' dispute because the material cited do not establish the absence or presence of a genuine dispute. See Fed. R. Civ. P. 56(c).

| | Plaintiff's Statement of Additional Material Facts | | | | | |
|--------------|---|--|----------------------|--|--|--|
| Pl.'s No. | Fact | Supporting Evidence | Defendant's Response | | | |
| 69 | Deputy Alfred had never seen Mr. Barber prior to this incident and had no specific information about him. | "Exhibit 1" (Alfred Depo) at 29:20-24, 30:11-17. | Undisputed. | | | |
| 70 | At the time of the shooting, Deputy Alfred had no information that Mr. Barber had ever physically injured anyone. | "Exhibit 1" (Alfred Depo) at 30:18-20 | Undisputed. | | | |
| | | 37 | • | | | |

| 1 | | | | | |
|----|-----|--|------------------------------------|-------------|--|
| 2 | 71 | TD1 1 1 1 | T 1'1', 122 / A1C 1 | TT 1' . 1 | |
| 3 | 71 | The reporting party did not report that they saw | Exhibit 1" (Alfred Depo) at 31:12- | Undisputed. | |
| 4 | | Mr. Barber with a weapon | 18. | | |
| 5 | | or that Mr. Barber said he had a weapon. | | | |
| 6 | | nad a weapon. | | | |
| 7 | | | | | |
| 8 | 72 | Deputy Alfred never saw | "Exhibit 1" | Undisputed. | |
| 9 | 12 | a gun or other weapon | (Alfred Depo) at | Charsputea. | |
| 10 | | either on Mr. Barber or in | 13:7-18. | | |
| 11 | | the Trailblazer at any time. | | | |
| 12 | | time. | | | |
| 13 | | | | | |
| 14 | 73 | Based on Deputy Alfred's experience, a reporting | "Exhibit 1" (Alfred Depo) at | Undisputed. | |
| 15 | | party might state that a | 34:1-7. | | |
| 16 | | person has a gun in order | | | |
| 17 | | to expedite law enforcement response, | | | |
| 18 | | and then it often turns out | | | |
| 19 | | that the person did not | | | |
| 20 | | have a gun. | | | |
| 21 | | | | | |
| 22 | 7.4 | D | 66T 1. 1. 1. 1. 1. 22 | TI. P 1 | |
| 23 | 74 | Deputy Alfred did not have any information that | "Exhibit 1" (Alfred Depo) at | Undisputed. | |
| 24 | | Mr. Barber was under the | 31:23-25. | | |
| 25 | | influence of drugs or | | | |
| 26 | | alcohol. | | | |
| 27 | | | | | |
| 28 | 38 | | | | |

| 1 | | | | |
|------|-----|---|------------------------------|--|
| 2 | 75 | Deputy Alfred knew that | "Exhibit 1" | Undisputed. |
| 3 | | Mr. Barber was in his | (Alfred Depo) at | |
| 4 | | own driveway. | 32:11-17. | |
| 5 | | | | |
| 6 | | | | |
| 7 | 76 | The driveway width was | DeFoe Decl. at ¶ | Objection. This |
| 8 | | approximately 15 feet and 7 inches at the north end | 9(e); Morales Decl. at ¶ 7. | additional fact is immaterial and irrelevant |
| 9 | | and 13 feet and 8 inches | | to whether the force was |
| 10 | | at the south end. | | justified under the |
| 11 | | | | totality of the circumstances. |
| 12 | | | | Fed.R.Evid. Rules 401, |
| 13 | | | | 402, 403; Graham v. |
| 14 | | | | Connor, 490 U.S. 386 |
| 15 | | | | (1989); The Ninth Circuit Manual of Model |
| 16 | | | | Jury Instruction 9.25, |
| | | | | Unreasonable Seizure of |
| 17 | | | | Person (Excessive Force) pursuant to 42 U.S.C. § |
| 18 | | | | 1983. |
| 19 | | | | |
| 20 | 77 | During this incident | "Exhibit 1" | Undianutad |
| 21 | / / | During this incident, Deputy Alfred was armed | "Exhibit 1" (Alfred Depo) at | Undisputed. |
| 22 | | with a Taser, a police | 26:17-23. | |
| 23 | | baton, and OC spray. | | |
| 24 | | | | |
| 25 | | | | |
| 26 | 78 | During this incident, | "Exhibit 1" | Undisputed. |
| 27 | | Deputy Alfred had a | (Alfred Depo) at | |
| 28 | | flashlight that provided | 15:1-11. 39 | |
| - 11 | DT | PERMIDANTE COLINTY OF CAN DEDN | ADDING AND DEDITED OF | IDIOTODIED ALEDEDIO |

DEFENDANTS COUNTY OF SAN BERNARDINO AND DEPUTY CHRISTOPHER ALFRED'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO SEPARATE STATEMENT OF UNCONTROVERTED **FACTS**

| KASS | |
|---------|--|
| MANNING | |
| ž | |

| 1 | | some illumination. | | |
|----|-------|--------------------------------------|-------------------|--|
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | 79 | Deputy Alfred was the | "Exhibit 1" | Undisputed. |
| 6 | | starting point guard of his | (Alfred Depo) at | |
| 7 | | varsity high school basketball team. | 22:11-19. | |
| 8 | | | | |
| 9 | | | | |
| 10 | The C | hooting | | |
| | | hooting | | |
| 11 | 80 | When Deputy Alfred was | "Exhibit 2" | Objection. This |
| 12 | | attempting to contact Mr. | (Barber Depo) at | additional fact is |
| 13 | | Barber in his driveway | 42:6-43:9, 48:13- | immaterial and irrelevant |
| 14 | | prior to the shooting, Mr. | 19. | to whether the force was |
| | | Barber could not see | | justified under the |
| 15 | | Deputy Alfred. | | totality of the |
| 16 | | | | circumstances. |
| 17 | | | | Fed.R.Evid. Rules 401, |
| | | | | 402, 403; Graham v. |
| 18 | | | | Connor, 490 U.S. 386 |
| 19 | | | | (1989); The Ninth |
| 20 | | | | Circuit Manual of Model Jury Instruction 9.25, |
| 21 | | | | Unreasonable Seizure of |
| 22 | | | | Person (Excessive Force) |
| 23 | | | | pursuant to 42 U.S.C. § |
| 24 | | | | 1983. |
| | | | | Plaintiff was convicted |
| 25 | | | | with California Penal |
| 26 | | | | Code section 245(a)(1) |
| 27 | | | | which necessarily found |
| 28 | | | | that Plaintiff reversed |
| _0 | | | 40 | |

| | | | his vehicle into Deputy Alfred knowing that Deputy Alfred was behind his vehicle. Ex. H; Ex. K. |
|-----|--|---|--|
| 0.1 | | (D 131; 20 | |
| 81 | Mr. Barber heard a voice but did not see anyone in the driveway. | "Exhibit 2" (Barber Depo) at 42:6-43:8, 44:19-45:5. | Objection. This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; Graham v. Connor, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. Plaintiff was convicted with California Penal Code section 245(a)(1) which necessarily found that Plaintiff reversed his vehicle into Deputy Alfred knowing that Deputy Alfred was behind his vehicle. |
| | | | Ex. H; Ex. K. |
| | | 41 | |

| 1 | | | | |
|----|----|--|-------------------------|--|
| 2 | 82 | When Barber heard | "Exhibit 2" | Objection. This |
| 3 | | Deputy Alfred's voice, he | (Barber Depo) at | additional fact is |
| 4 | | thought it was his | 35:10-20. | immaterial and irrelevant |
| 5 | | neighbor speaking. | | to whether the force was justified under the |
| | | | | totality of the |
| 6 | | | | circumstances. |
| 7 | | | | Fed.R.Evid. Rules 401, |
| 8 | | | | 402, 403; Graham v. |
| 9 | | | | Connor, 490 U.S. 386 |
| 10 | | | | (1989); The Ninth |
| 11 | | | | Circuit Manual of Model Jury Instruction 9.25, |
| 12 | | | | Unreasonable Seizure of |
| | | | | Person (Excessive Force) |
| 13 | | | | pursuant to 42 U.S.C. § |
| 14 | | | | 1983. |
| 15 | | | | Plaintiff was convicted |
| 16 | | | | with California Penal |
| 17 | | | | Code section 245(a)(1) |
| 18 | | | | which necessarily found |
| 19 | | | | that Plaintiff reversed his |
| 20 | | | | vehicle into Deputy |
| | | | | Alfred knowing that Deputy Alfred was |
| 21 | | | | behind his vehicle. |
| 22 | | | | |
| 23 | | | | Ex. H; Ex. K. |
| 24 | | | | |
| 25 | 83 | Prior to firing his shots, | "Exhibit 1" | Undisputed. |
| 26 | | Deputy Alfred formed the impression that Mr. | (Alfred Depo) at 36:19- | |
| 27 | | Barber's vehicle was on | 21, 40:10-22, | |
| | | and that Mr. Barber | 74:1-13. | |
| 28 | | SEEDID AND CONTROL OF CASE SEEDING | 42 | ADJUGA DALED AL EDEDIG |

| 1 | | wanted to leave. | | |
|----|----|----------------------------|--------------------|--|
| 2 | | | | |
| 3 | | | | |
| 4 | 84 | The Trailblazer was | Morales Decl. at ¶ | Objection. This |
| 5 | | parked on a low-friction | 10. | additional fact is |
| 6 | | surface consisting of dirt | | immaterial and irrelevant to whether the force was |
| 7 | | and gravel. | | justified under the |
| 8 | | | | totality of the |
| 9 | | | | circumstances. |
| 10 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v</i> . |
| 11 | | | | Connor, 490 U.S. 386 |
| 12 | | | | (1989); The Ninth |
| 13 | | | | Circuit Manual of Model Jury Instruction 9.25, |
| 14 | | | | Unreasonable Seizure of |
| 15 | | | | Person (Excessive Force) |
| 16 | | | | pursuant to 42 U.S.C. § |
| 17 | | | | 1983. |
| 18 | | | | Furthermore, Morales is |
| 19 | | | | a mechanical engineer |
| | | | | and is both not qualified to make this conclusion |
| 20 | | | | and this conclusion is the |
| 21 | | | | result of the unreliable |
| 22 | | | | application of the facts, ignoring direct evidence |
| 23 | | | | to the contrary. See |
| 24 | | | | Fed.R.Civ.Pro. 56; FRE |
| 25 | | | | 702. |
| 26 | 85 | The Trailblazer could not | Morales Decl. at ¶ | Objection: This |
| 27 | | have moved as soon as the | 10. | additional fact is |
| 28 | | | 43 | ANGEODIED AT EDEDIG |

| accelerator was engaged because the rear tires experienced a loss of traction, and the front tires had to overcome static friction. The surface composition created a mechanical limitation that prevented rapid acceleration and restricted maximum achievable speeds, regardless of accelerator input. Accelerator input. Image: Control of the contrary. | to whether the force was justified under the totality of the circumstances. |
|--|--|
| | Connor, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and this conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. See Fed.R.Civ.Pro. 56; FRE 702. Undisputed. |
| 44 | _ - • |

| 1 | 87 | Deputy Alfred | "Exhibit 1" | Undisputed. |
|----|----|---|------------------|---|
| 2 | | intentionally fired six | (Alfred Depo) at | |
| 3 | | shots at Mr. Barber with | 16:12-19, 17:7- | |
| 4 | | the intent of striking him. | 16. | |
| 5 | | | | |
| | | | | |
| 6 | 88 | At the time of the | DeFoe Decl. at ¶ | Objection. This |
| 7 | | shooting, it was not the | 9. | additional fact is |
| 8 | | case that any person was | | immaterial and irrelevant |
| 9 | | about to be run over by | | to whether the force was |
| 10 | | the Trailblazer with no opportunity to get out of | | justified under the totality of the |
| 11 | | the way. | | circumstances. |
| | | , | | Fed.R.Evid. Rules 401, |
| 12 | | | | 402, 403; Graham v. |
| 13 | | | | Connor, 490 U.S. 386 |
| 14 | | | | (1989); The Ninth |
| 15 | | | | Circuit Manual of Model |
| 16 | | | | Jury Instruction 9.25, Unreasonable Seizure of |
| 17 | | | | Person (Excessive Force) |
| | | | | pursuant to 42 U.S.C. § |
| 18 | | | | 1983. |
| 19 | | | | |
| 20 | | | | DeFoe's conclusion is the result of the |
| 21 | | | | unreliable application of |
| 22 | | | | the facts, ignoring direct |
| 23 | | | | evidence to the contrary |
| 24 | | | | and invades the province |
| 25 | | | | of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE |
| 26 | | | | 702 and 704. |
| | | | | |
| 27 | | | | Ex. A at p. 49. |
| 28 | | | 45 | |

| 1 | | | | Ex. C |
|----|----|---|------------------|--|
| 2 | | | | Ex. G at p. 47:4-15; |
| 3 | | | | 48:17-22 |
| | | | | Ex. 2 to Ex. A. |
| 4 | | | | Ex. A at p. 60:7-16; |
| 5 | | | | 93:3-7; Exhibit 4 to Ex. |
| 6 | | | | A |
| 7 | 89 | Deputy Alfred had ample | Morales Decl. at | Objection: This |
| . | | time and room to move | ¶ 7; DeFoe Decl. | additional fact is immaterial and irrelevant |
| 8 | | out of the path of the Trailblazer rather than | at ¶ 9. | to whether the force was |
| 9 | | shooting. | | justified under the |
| 10 | | snooting. | | totality of the |
| 11 | | | | circumstances. |
| | | | | Fed.R.Evid. Rules 401, |
| 12 | | | | 402, 403; <i>Graham v</i> . |
| 13 | | | | Connor, 490 U.S. 386 |
| 14 | | | | (1989); The Ninth |
| 15 | | | | Circuit Manual of Model |
| | | | | Jury Instruction 9.25, |
| 16 | | | | Unreasonable Seizure of |
| 17 | | | | Person (Excessive Force) |
| 18 | | | | pursuant to 42 U.S.C. § 1983. |
| 19 | | | | 1703. |
| 20 | | | | Furthermore, Morales is |
| | | | | a mechanical engineer |
| 21 | | | | and is both not qualified |
| 22 | | | | to make this conclusion |
| 23 | | | | and his conclusion is the |
| 24 | | | | result of the unreliable |
| 25 | | | | application of the facts, |
| | | | | ignoring direct evidence to the contrary. <i>See</i> |
| 26 | | | | Fed.R.Civ.Pro. 56; FRE |
| 27 | | | | 702. DeFoe's conclusion |
| 28 | | | 46 | 11 11 11 11 11 11 11 11 11 11 11 11 11 |

| 1 | | | | is the result of the |
|----|----|---|-------------------------------------|--|
| 2 | | | | unreliable application of |
| 3 | | | | the facts, ignoring direct |
| | | | | evidence to the contrary |
| 4 | | | | and invades the province |
| 5 | | | | of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE |
| 6 | | | | 702 and 704. |
| 7 | | | | |
| 8 | | | | Ex. A at p. 49. |
| 9 | | | | Ex. C |
| | | | | Ex. G at p. 47:4-15; 48:17-22 |
| 10 | | | | Ex. 2 to Ex. A. |
| 11 | | | | Ex. A at p. 60:7-16; |
| 12 | | | | 93:3-7; Exhibit 4 to |
| 13 | | | | Ex. A |
| 14 | | | | |
| | 90 | At the time of the | DeFoe Decl. at ¶ | Undisputed. |
| 15 | | shooting, Deputy Alfred | 9(f); "Exhibit 1" | |
| 16 | | had approximately two to four feet between the left | (Alfred Depo) at | |
| 17 | | side of his body and the | 18:8-22; "Exhibit 3" (scene photo). | |
| 18 | | chain link fence to his | 5 (seene photo). | |
| 19 | | left. | | |
| 20 | | | | |
| 21 | | | | |
| 22 | 91 | When the Trailblazer | "Exhibit 1" | Objection. This |
| | | rolled backwards, it did so | (Alfred Depo) at | additional fact is |
| 23 | | in a straight line. The | 61:19-22; Morales | immaterial and irrelevant |
| 24 | | resting position of the | Decl. at ¶ 13. | to whether the force was |
| 25 | | vehicle after the incident | | justified under the |
| 26 | | shows that the wheels are | | totality of the |
| 27 | | straight, meaning that Mr. | | circumstances. |
| | | Barber never changed the | | Fed.R.Evid. Rules 401, |
| 28 | | | 47 | |

| 1 | | direction of the vehicle. | | 402, 403; Graham v. |
|----|----|----------------------------|--------------------|--|
| 2 | | | | Connor, 490 U.S. 386 |
| 3 | | | | (1989); The Ninth |
| | | | | Circuit Manual of Model |
| 4 | | | | Jury Instruction 9.25, |
| 5 | | | | Unreasonable Seizure of |
| 6 | | | | Person (Excessive Force) pursuant to 42 U.S.C. § |
| 7 | | | | 1983. |
| 8 | | | | 1703. |
| | | | | This misstates the |
| 9 | | | | testimony of Deputy |
| 10 | | | | Alfred: |
| 11 | | | | |
| 12 | | | | "Q: When the vehicle |
| | | | | was backing up, could |
| 13 | | | | you tell if it was |
| 14 | | | | backing straight up or slightly at an angle, |
| 15 | | | | one way or another |
| 16 | | | | A: It appeared to be |
| 17 | | | | straight backwards." |
| | | | | |
| 18 | 92 | Deputy Alfred failed to | DeFoe Decl. at ¶ | Undisputed. |
| 19 | | give Mr. Barber a verbal | 9(c); "Exhibit 1" | |
| 20 | | warning that he was | (Alfred Depo) at | |
| 21 | | prepared to use deadly | 13:19-21. | |
| 22 | | force before shooting. | | |
| | | | | |
| 23 | | | | |
| 24 | 93 | When Deputy Alfred fired | Morales Decl. at ¶ | Objection: This |
| 25 | | his first shot, the | 11. | additional fact is |
| 26 | | Trailblazer was either not | | immaterial and irrelevant |
| 27 | | in motion or was moving | | to whether the force was |
| | | at a slow speed of under | | justified under the |
| 28 | | | 48 | |

| 1 | | one mile per hour. | | totality of the |
|----|-----------------|-----------------------------|------------------------|--|
| 2 | | | | circumstances. |
| 3 | | | | Fed.R.Evid. Rules 401, |
| | | | | 402, 403; <i>Graham v</i> . |
| 4 | | | | Connor, 490 U.S. 386 |
| 5 | | | | (1989); The Ninth |
| 6 | | | | Circuit Manual of Model |
| 7 | | | | Jury Instruction 9.25, |
| | | | | Unreasonable Seizure of Person (Excessive Force) |
| 8 | | | | pursuant to 42 U.S.C. § |
| 9 | | | | 1983. |
| 10 | | | | 1703. |
| 11 | | | | Furthermore, Morales |
| | | | | is a mechanical |
| 12 | | | | engineer and is both |
| 13 | | | | not qualified to make |
| 14 | | | | this conclusion and his |
| 15 | | | | conclusion is the result |
| | | | | of the unreliable |
| 16 | | | | application of the |
| 17 | | | | facts, ignoring direct evidence to the |
| 18 | | | | contrary. See |
| 19 | | | | Fed.R.Civ.Pro. 56; |
| | | | | FRE 702. |
| 20 | | | | Ex. A at p. 49. |
| 21 | | | | Ex. C |
| 22 | | | | Ex. G at p. 47:4-15; |
| 23 | | | | 48:17-22 |
| | | | | Ex. 2 to Ex. A. |
| 24 | | | | Ex. A at p. 60:7-16; |
| 25 | | | | 93:3-7; Exhibit 4 to |
| 26 | | | | Ex. A |
| 27 | 94 | At the time of the first | Morales Decl. at | Objection: This |
| 28 |) 74 | At the time of the first | | Objection: This |
| | | FENDANTS COUNTY OF SAN BERN | 49 ARDINO AND DEPUTY C | HRISTOPHER ALFRED'S |

| 1 | shot, the Trailblazer had | ¶ 11. | additional fact is |
|----|---------------------------|-------|---|
| 2 | moved backwards less | | immaterial and irrelevant |
| 3 | than one foot. | | to whether the force was |
| | | | justified under the |
| 4 | | | totality of the |
| 5 | | | circumstances. |
| 6 | | | Fed.R.Evid. Rules 401, |
| | | | 402, 403; <i>Graham v</i> . |
| 7 | | | Connor, 490 U.S. 386 |
| 8 | | | (1989); The Ninth |
| 9 | | | Circuit Manual of Model |
| 10 | | | Jury Instruction 9.25, Unreasonable Seizure of |
| | | | Person (Excessive Force) |
| 11 | | | pursuant to 42 U.S.C. § |
| 12 | | | 1983. |
| 13 | | | 1,00. |
| 14 | | | Furthermore, Morales |
| 15 | | | is a mechanical |
| | | | engineer and is both |
| 16 | | | not qualified to make |
| 17 | | | this conclusion and his |
| 18 | | | conclusion is the result of the unreliable |
| 19 | | | application of the |
| 20 | | | facts, ignoring direct |
| 21 | | | evidence to the contrary. <i>See</i> |
| 22 | | | Fed.R.Civ.Pro. 56; |
| 23 | | | FRE 702. |
| 24 | | | Ev A at n 40 |
| 25 | | | Ex. A at p. 49. Ex. C |
| 26 | | | Ex. G at p. 47:4-15; |
| 27 | | | 48:17-22 |
| | | | Ex. 2 to Ex. A. |
| 28 | | 50 | |

| 1 | | | | Ex. A at p. 60:7-16; |
|----|----|-----------------------------|------------------|--|
| 2 | | | | 93:3-7; Exhibit 4 to |
| 3 | | | | Ex. A |
| | | | | |
| 4 | 95 | At the time of the second | Morales Decl. at | Objection: This |
| 5 | | shot, the Trailblazer still | ¶ 11. | additional fact is |
| 6 | | had not traveled | | immaterial and irrelevant |
| 7 | | backwards more than one | | to whether the force was |
| | | foot. | | justified under the |
| 8 | | | | totality of the |
| 9 | | | | circumstances. |
| 10 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v</i> . |
| | | | | Connor, 490 U.S. 386 |
| 11 | | | | (1989); The Ninth |
| 12 | | | | Circuit Manual of Model |
| 13 | | | | Jury Instruction 9.25, |
| 14 | | | | Unreasonable Seizure of |
| | | | | Person (Excessive Force) |
| 15 | | | | pursuant to 42 U.S.C. § |
| 16 | | | | 1983. |
| 17 | | | | |
| 18 | | | | Furthermore, Morales |
| 19 | | | | is a mechanical |
| | | | | engineer and is both not qualified to make |
| 20 | | | | this conclusion and his |
| 21 | | | | conclusion is the result |
| 22 | | | | of the unreliable |
| 23 | | | | application of the |
| | | | | facts, ignoring direct |
| 24 | | | | evidence to the |
| 25 | | | | contrary. See |
| 26 | | | | Fed.R.Civ.Pro. 56; |
| 27 | | | | FRE 702. |
| | | | | |
| 28 | | | 51 | |

| 1 | | | | Ex. A at p. 49. |
|----|----|--------------------------|------------------|--|
| 2 | | | | Ex. C |
| 3 | | | | Ex. G at p. 47:4-15; |
| | | | | 48:17-22 |
| 4 | | | | Ex. 2 to Ex. A. |
| 5 | | | | Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to |
| 6 | | | | Ex. A |
| 7 | | | | EA. II |
| 8 | 96 | At the time of the last | Morales Decl. at | Objection: This |
| 9 | | shot, the vehicle had | ¶ 11. | additional fact is |
| | | started decelerating and | | immaterial and irrelevant |
| 10 | | was moving at | | to whether the force was |
| 11 | | approximately under one | | justified under the |
| 12 | | mile per hour before | | totality of the |
| 13 | | coming to rest. | | circumstances. |
| | | | | Fed.R.Evid. Rules 401, |
| 14 | | | | 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 |
| 15 | | | | (1989); The Ninth |
| 16 | | | | Circuit Manual of Model |
| 17 | | | | Jury Instruction 9.25, |
| | | | | Unreasonable Seizure of |
| 18 | | | | Person (Excessive Force) |
| 19 | | | | pursuant to 42 U.S.C. § |
| 20 | | | | 1983. |
| 21 | | | | Furthermore, Morales |
| 22 | | | | is a mechanical |
| 23 | | | | engineer and is both |
| 24 | | | | not qualified to make |
| | | | | this conclusion and his |
| 25 | | | | conclusion is the result |
| 26 | | | | of the unreliable |
| 27 | | | | application of the facts, ignoring direct |
| 28 | | | 52 | racis, ignoring direct |

| 1 | | | | evidence to the |
|----|----|------------------------------|-------------------|-------------------------------|
| 2 | | | | contrary. See |
| 3 | | | | Fed.R.Civ.Pro. 56; |
| 3 | | | | FRE 702. |
| 4 | | | | Ex. A at p. 49. |
| 5 | | | | Ex. C |
| 6 | | | | Ex. G at p. 47:4-15; |
| | | | | 48:17-22 |
| 7 | | | | Ex. 2 to Ex. A. |
| 8 | | | | Ex. A at p. 60:7-16; |
| 9 | | | | 93:3-7; Exhibit 4 to |
| 10 | | | | Ex. A |
| | 97 | At the time of the first | Morales Decl. at | Objection: This |
| 11 | | shot, Deputy Alfred was | ¶ 16. | additional fact is |
| 12 | | approximately 51 feet to | 10. | immaterial and irrelevant |
| 13 | | the rear of the Trailblazer. | | to whether the force was |
| 14 | | | | justified under the |
| | | | | totality of the |
| 15 | | | | circumstances. |
| 16 | | | | Fed.R.Evid. Rules 401, |
| 17 | | | | 402, 403; <i>Graham v</i> . |
| 18 | | | | Connor, 490 U.S. 386 |
| | | | | (1989); The Ninth |
| 19 | | | | Circuit Manual of Model |
| 20 | | | | Jury Instruction 9.25, |
| 21 | | | | Unreasonable Seizure of |
| 22 | | | | Person (Excessive Force) |
| | | | | pursuant to 42 U.S.C. § 1983. |
| 23 | | | | 1903. |
| 24 | | | | Furthermore, Morales |
| 25 | | | | is a mechanical |
| 26 | | | | engineer and is both |
| | | | | not qualified to make |
| 27 | | | | this conclusion and his |
| 28 | | | 53 | |

| 1 | | | | conclusion is the result |
|----------------------------------|----|------------------------------|------------------|--|
| 2 | | | | of the unreliable |
| 3 | | | | application of the |
| | | | | facts, ignoring direct |
| 4 | | | | evidence to the |
| 5 | | | | contrary. See |
| 6 | | | | Fed.R.Civ.Pro. 56; |
| 7 | | | | FRE 702. |
| | | | | Ev A ot p 40 |
| 8 | | | | Ex. A at p. 49. |
| 9 | | | | Ex. G at p. 47:4-15; |
| 10 | | | | 48:17-22 |
| 11 | | | | Ex. 2 to Ex. A. |
| | | | | Ex. A at p. 60:7-16; |
| 12 | | | | 93:3-7; Exhibit 4 to Ex. |
| 13 | | | | A |
| 14 | 98 | At the time of the last | Morales Decl. at | Objection: This |
| 15 | | shot, Deputy Alfred was | ¶ 16. | additional fact is |
| | | approximately 21 feet to | | immaterial and irrelevant |
| 16 | | the rear of the Trailblazer. | | to whether the force was |
| 17 | | | | justified under the |
| 18 | | | | totality of the circumstances. |
| 19 | | | | i circumstances. |
| | | | | |
| | | | | Fed.R.Evid. Rules 401, |
| 20 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v</i> . |
| 20 21 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 |
| | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v</i> . |
| 21 22 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth |
| 21 22 23 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model |
| 21 22 23 24 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, |
| 21 22 23 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of |
| 21 22 23 24 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) |
| 21 22 23 24 25 | | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. |
| 21 22 23 24 25 26 | | | 54 | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> <i>Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § |

| | | | is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary. See Fed.R.Civ.Pro. 56; FRE 702. Ex. A at p. 49. Ex. C Ex. G at p. 47:4-15; 48:17-22 Ex. 2 to Ex. A. Ex. A at p. 60:7-16; 93:3-7; Exhibit 4 to Ex. A |
|----|---|------------------------|--|
| 99 | Deputy Alfred was in motion and advancing toward the Trailblazer during the shooting sequence, at a pace faster than normal human walking pace. | Morales Decl. at ¶ 19. | Objection: This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of |
| | | 55 | |

| 1 | | | | Person (Excessive Force) |
|------|-----|-------------------------|--------------------|--|
| 2 | | | | pursuant to 42 U.S.C. § |
| 3 | | | | 1983. |
| 4 | | | | Example Monoles |
| | | | | Furthermore, Morales is a mechanical |
| 5 | | | | engineer and is both |
| 6 | | | | not qualified to make |
| 7 | | | | this conclusion and his |
| 8 | | | | conclusion is the result |
| | | | | of the unreliable |
| 9 | | | | application of the |
| 10 | | | | facts, ignoring direct |
| 11 | | | | evidence to the |
| 12 | | | | contrary. See |
| 13 | | | | Fed.R.Civ.Pro. 56; FRE 702. |
| | | | | TRE 702. |
| 14 | | | | Ex. A at p. 49. |
| 15 | | | | Ex. C |
| 16 | | | | Ex. G at p. 47:4-15; |
| 17 | | | | 48:17-22 |
| 18 | | | | Ex. 2 to Ex. A. |
| | | | | Ex. A at p. 60:7-16; |
| 19 | | | | 93:3-7; Exhibit 4 to |
| 20 | | | | Ex. A Ex. A at p. 14:5-7; |
| 21 | | | | 15:12-16:1. |
| 22 | | | | Ex. A at p. 40:23-25. |
| 23 | | | | The second secon |
| | | | | |
| 24 | 100 | The vehicle came to a | Morales Decl. at ¶ | Objection: This |
| 25 | | stop because Mr. Barber | 15. | additional fact is |
| 26 | | stepped on the brakes. | | immaterial and irrelevant |
| 27 | | The evidence indicates | | to whether the force was |
| 28 | | that Mr. Barber applied | | justified under the |
| ا ۵۵ | 56 | | | |

| | the brakes mildly, as | | totality of the | |
|-----|----------------------------|--------------------|---------------------------|--|
| | opposed to slamming on | | circumstances. | |
| | the brakes. The vehicle | | Fed.R.Evid. Rules 401, | |
| | gradually decelerated | | 402, 403; Graham v. | |
| | after the brakes were | | Connor, 490 U.S. 386 | |
| | pressed while remaining | | (1989); The Ninth | |
| | in reverse gear. | | Circuit Manual of Model | |
| | | | Jury Instruction 9.25, | |
| | | | Unreasonable Seizure of | |
| | | | Person (Excessive Force) | |
| | | | pursuant to 42 U.S.C. § | |
| | | | 1983. | |
| | | | Furthermore, Morales | |
| | | | is a mechanical | |
| | | | engineer and is both | |
| | | | not qualified to make | |
| | | | this conclusion and his | |
| | | | conclusion is the result | |
| | | | of the unreliable | |
| | | | application of the | |
| | | | facts, ignoring direct | |
| | | | evidence to the | |
| | | | contrary. See | |
| | | | Fed.R.Civ.Pro. 56; | |
| | | | FRE 702. | |
| | | | 110. | |
| | | | | |
| 101 | The maximum speed the | Morales Decl. at ¶ | Objection: This | |
| | Trailblazer reached during | 14. | additional fact is | |
| | the six shots was | | immaterial and irrelevant | |
| | approximately 3.4 miles | | to whether the force was | |
| | per hour. | | justified under the | |
| | | | totality of the | |
| | | | circumstances. | |
| | | | Fed.R.Evid. Rules 401, | |
| 57 | | | | |

| | | | 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. Furthermore, Morales is a mechanical engineer and is both not qualified to make this conclusion and his conclusion is the result of the unreliable |
|-----|---|------------------------|--|
| | | | application of the facts, ignoring direct evidence |
| | | | to the contrary. See |
| | | | Fed.R.Civ.Pro. 56; FRE 702. |
| 102 | Dood on standard | Maralas Dasl at | Objections This |
| 102 | Based on standard biomechanical data, the | Morales Decl. at ¶ 14. | Objection: This additional fact is |
| | average human walking | 14. | immaterial and irrelevant |
| | speed ranges from 3.0 to | | to whether the force was |
| | 3.5 miles per hour, | | justified under the |
| | meaning the vehicle's | | totality of the |
| | maximum speed was | | circumstances. |
| | equivalent to or slightly | | Fed.R.Evid. Rules 401, |
| | faster than a person | | 402, 403; Graham v. |
| | walking at normal pace. | | Connor, 490 U.S. 386 |
| | | | (1989); The Ninth |
| | | | Circuit Manual of Model |
| | | | Jury Instruction 9.25, |
| | | | Unreasonable Seizure of |
| | | 58 | |

| 1 | | | | Person (Excessive Force) |
|----|-----|--|------------------------------|--|
| 2 | | | | pursuant to 42 U.S.C. § |
| 3 | | | | 1983. |
| 4 | | | | Furthermore, Morales is |
| 5 | | | | a mechanical engineer |
| 6 | | | | and is both not qualified to make this conclusion |
| 7 | | | | and his conclusion is the |
| 8 | | | | result of the unreliable |
| 9 | | | | application of the facts, |
| 10 | | | | ignoring direct evidence to the contrary. <i>See</i> |
| 11 | | | | Fed.R.Civ.Pro. 56; FRE |
| 12 | | | | 702. |
| 13 | 103 | Deputy Alfred never had | "Exhibit 1" | Objection. This |
| | | to dive out of the way of the Trailblazer. | (Alfred Depo) at 48:17-19. | misstates Deputy Alfred's testimony, |
| 14 | | the Hunolazer. | 40.17 17. | which is, as follows: |
| 15 | | | | |
| 16 | | | | "Q: And you didn't, |
| 17 | | | | for example, dive out of the way; is that also |
| 18 | | | | correct? |
| 19 | | | | A: That is correct." |
| 20 | 104 | Daniela Alfra I arra nat | 65E1-:1-:4-122 | II. di accesso d |
| 21 | 104 | Deputy Alfred was not struck by the Trailblazer. | "Exhibit 1" (Alfred Depo) at | Undisputed. |
| 22 | | | 48:14-16. | |
| 23 | 107 | | | |
| 24 | 105 | After the shooting, Mr. Barber's foot was on the | "Exhibit 1" (Alfred Depo) at | Undisputed. |
| 25 | | brake pedal. | 53:24-54:3. | |
| 26 | | • | | |
| 27 | | | | |
| 28 | | | 59 | |
| | | | JI | |

| 106 | When the deputies were removing Mr. Barber from the Trailblazer after the shooting, the Trailblazer moved backwards an additional two to three feet. | Morales Decl. at ¶ 20. | Undisputed. |
|-------|--|------------------------|---|
| Pre-S | Shooting Negligence | | Objection to the as to the Characterization of this section as "Negligence" |
| 107 | Police officers are expected to follow their own department policies. | DeFoe Decl. at ¶ 7. | Objection: This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. Furthermore, DeFoe's conclusion is the result of the unreliable |
| | | 60 | |

| 1 | | | | application of the facts, |
|----|---|---|----------------------------|--|
| 2 | | | | ignoring direct evidence |
| 3 | | | | to the contrary and |
| 4 | | | | invades the province of the jury. <i>See</i> |
| | | | | Fed.R.Civ.Pro. 56; FRE |
| 5 | | | | 702 and 704. |
| 6 | | | | |
| 7 | 108 | Deputy Alfred used | "Exhibit 1" | Undisputed. |
| 8 | | profanity with Mr. Barber | (Alfred Depo) at | |
| 9 | | during this incident. | 38:7-19. | |
| 10 | | | | |
| 11 | | | | |
| 12 | 109 | Deputy Alfred did not | "Exhibit 1" | Undisputed. |
| 13 | | request backup before | (Alfred Depo) at | |
| | | attempting to make contact with Mr. Barber. | 33:4-6. | |
| 14 | | contact with Mr. Barber. | | |
| 15 | | | | |
| 16 | | | | |
| 17 | 110 | Prior to the shooting, | "Exhibit 1" | Undisputed. |
| 18 | | Deputy Alfred did not identify himself as a | (Alfred Depo) at 38:20-22. | |
| 19 | | police officer. | 30.20 22. | |
| 20 | | • | | |
| 21 | | | | |
| 22 | 111. | After seeing the reverse | "Exhibit 1" | Objection. The |
| 23 | | lights come on, Deputy | (Alfred Depo) at | testimony of Deputy |
| 24 | | Alfred failed to step out of | 41:1-3, 49:8-50:2. | Alfred does not include |
| | | the way. | | the word fail. |
| 25 | | | | "O. Did then |
| 26 | | | | "Q: Did you then move to step out of the way |
| 27 | | | | once you saw the |
| 28 | | | 61 | |
| | DEFENDANTS COUNTY OF SAN BERNARDINO AND DEPUTY CHRISTOPHER ALFRED'S | | | |

| $\begin{bmatrix} 1 \\ 2 \end{bmatrix}$ | | | | reverse lights come on? A: No." |
|--|-----|----------------------------|------------------|--|
| | | | | |
| 3 | 112 | Deputy Alfred did not | "Exhibit 1" | Undisputed. |
| 4 | | attempt to move out of the | (Alfred Depo) at | |
| 5 | | way to the left or to the | 48:2-5. | |
| 6 | | right before he fired the | | |
| 7 | | shots. | | |
| 8 | 113 | A reasonable officer in | DeFoe Decl. at ¶ | Objection: This |
| 9 | | Deputy Alfred's position | 10(c). | additional fact is |
| | | would have moved to a | | immaterial and irrelevant |
| 10 | | position of cover and | | to whether the force was |
| 11 | | formulated an effective | | justified under the |
| 12 | | and safe tactical plan. | | totality of the circumstances. |
| 13 | | | | Fed.R.Evid. Rules 401, |
| 14 | | | | 402, 403; <i>Graham v</i> . |
| | | | | Connor, 490 U.S. 386 |
| 15 | | | | (1989); The Ninth |
| 16 | | | | Circuit Manual of Model |
| 17 | | | | Jury Instruction 9.25, |
| 18 | | | | Unreasonable Seizure of |
| 19 | | | | Person (Excessive Force) pursuant to 42 U.S.C. § |
| 20 | | | | 1983. |
| 21 | | | | |
| 22 | | | | Furthermore, DeFoe's |
| 23 | | | | conclusion is the result of the unreliable |
| | | | | application of the facts, |
| 24 | | | | ignoring direct evidence |
| 25 | | | | to the contrary and |
| 26 | | | | invades the province of |
| 27 | | | | the jury. See |
| 28 | | | 62 | Fed.R.Civ.Pro. 56; FRE |

| | | | 702 and 704. |
|--------|---|---------------------|---|
| Police | Officer Training and Standa | rds | |
| | | | |
| 114 | Basic police officer training teaches that shooting at a moving vehicle has shown to be a poor tactic in most scenarios. If a driver is wounded or killed when operating a motor vehicle, it prevents their ability to effectively operate a motor vehicle. | DeFoe Decl. at ¶ 7. | Objection: This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; Graham v. Connor, 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force pursuant to 42 U.S.C. § 1983. Furthermore, DeFoe's |
| | | | conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704. |
| 115 | An assaultive motor | DeFoe Decl. at ¶ | Objection. This |
| | vehicle does not | 7. | additional fact is |
| | presumptively justify the | | immaterial and irrelevant |

use of deadly force.

27

28

| 2 | | Justified under |
|----|--|-------------------------------|
| 3 | | totality of the |
| | | circumstances |
| 4 | | Fed.R.Evid. R |
| 5 | | 402, 403; <i>Gra</i> |
| 6 | | Connor, 490 U |
| | | (1989); The N |
| 7 | | Circuit Manua |
| 8 | | Jury Instruction |
| 9 | | Unreasonable |
| 10 | | Person (Excest pursuant to 42 |
| | | 1983. |
| 11 | | 1903. |
| 12 | | Furthermore, |
| 13 | | conclusion is |
| 14 | | of the unreliab |
| | | application of |
| 15 | | ignoring direc |
| 16 | | to the contrary |
| 17 | | invades the pr |
| 18 | | the jury. See |
| | | Fed.R.Civ.Pro |
| 19 | | 702 and 704. |
| 20 | | |
| 21 | | Paragraph 7 o |
| | | DeFoe Decla |
| 22 | | states: |
| 23 | | Standards Su |
| 24 | | Shooting at N |
| 25 | | Vehicles |
| | | San Bernardi |
| 26 | | San Bernardi |

justified under the S. Rules 401, aham v. U.S. 386 **Ninth** al of Model ion 9.25, e Seizure of essive Force) 2 U.S.C. §

to whether the force was

DeFoe's the result ble f the facts, ct evidence ry and province of o. 56; FRE

of the aration

urrounding Moving lino County Sheriff's Department Manual, Policy 3.608,

| | | | The Use of Lethal |
|--------------|---------------------------|-------------|---------------------------|
| | | | Force, states as follows: |
| | | | Firearms should not be |
| | | | discharged from or at a |
| | | | moving vehicle except |
| | | | in exigent |
| | | | circumstances. In these |
| | | | situations, a safety |
| | | | member must have |
| | | | articulable reason(s) for |
| | | | this use of lethal force, |
| | | | which include, but are |
| | | | not limited to the |
| | | | following: [1] A person |
| | | | in the vehicle is |
| | | | threatening the safety |
| | | | member or another |
| | | | person with lethal force |
| | | | by means other than the |
| | | | vehicle; or [2] The |
| | | | vehicle is operated in a |
| | | | manner which is likely |
| | | | to result in great bodily |
| | | | injury or death to a |
| | | | safety member or |
| | | | another person, and |
| | | | other reasonable means |
| | | | of defense have been |
| | | | exhausted, or are not |
| | | | available or practical. |
| | | | This may include, if |
| | | | time and circumstances |
| | | | allow, moving out of the |
| | | | path of the vehicle. |
| 116 | At the time of this | "Exhibit 1" | Undisputed. |
| | | 65 | |
| | EFENDANTS COUNTY OF SAN E | | Y CHRISTOPHER ALFRED'S |

| 1 | | incident, Deputy Alfred | (Alfred Depo) at | |
|----|-----|---|------------------------------|--|
| 2 | | understood that the | 10:14-11:22. | |
| 3 | | County of San | | |
| | | Bernardino's policy | | |
| 4 | | directed that deputies | | |
| 5 | | "shall not" shoot at a | | |
| 6 | | moving vehicle. | | |
| 7 | 117 | At the time of this | "Exhibit 1" | Undisputed. |
| 8 | | incident, Deputy Alfred | (Alfred Depo) at | |
| | | had been trained to get out | 10:14-11:22. | |
| 9 | | of the path of a moving | | |
| 10 | | vehicle, if feasible, rather | | |
| 11 | | than shooting at it. | | |
| 12 | | | | |
| 13 | 118 | At the time of this | "Exhibit 1" | Undianutad |
| | 118 | incident, Deputy Alfred | "Exhibit 1" (Alfred Depo) at | Undisputed. |
| 14 | | had been trained not to | 11:17-22. | |
| 15 | | tactically position himself | 11.17 22. | |
| 16 | | in a bad spot, if he can | | |
| 17 | | avoid it, with respect to | | |
| 18 | | moving vehicles. | | |
| | | | | |
| 19 | 110 | XX 1 1 0 0 11 | | |
| 20 | 119 | Under the facts of this | DeFoe Decl. at ¶ | Objection. This |
| 21 | | case and pursuant to police standards and | 8. | additional fact is immaterial and irrelevant |
| 22 | | training, it would have | | to whether the force was |
| 23 | | been inappropriate for | | justified under the |
| | | Deputy Alfred to shoot at | | totality of the |
| 24 | | Mr. Barber for fleeing or | | circumstances. |
| 25 | | attempting to flee. Police | | Fed.R.Evid. Rules 401, |
| 26 | | officers are trained that a | | 402, 403; <i>Graham v</i> . |
| 27 | | police officer cannot | | Connor, 490 U.S. 386 |
| | | justify shooting a vehicle | | (1989); The Ninth |
| 28 | | | 66 | |

| 1 | | or its driver simply | | Circuit Manual of Model |
|--|-----|---|--|--|
| $2 \parallel$ | | because that vehicle was | | Jury Instruction 9.25, |
| 3 | | fleeing or trying to leave the area. | | Unreasonable Seizure of Person (Excessive Force) |
| 4 | | | | pursuant to 42 U.S.C. § |
| 5 | | | | 1983. |
| 6 | | | | Furthermore, DeFoe's |
| 7 | | | | conclusion is the result |
| 8 | | | | of the unreliable |
| 9 | | | | application of the facts, ignoring direct evidence |
| 10 | | | | to the contrary and |
| 11 | | | | invades the province of the jury. <i>See</i> |
| 12 | | | | Fed.R.Civ.Pro. 56; FRE |
| 13 | | | | 702 and 704. |
| 14 | | | | |
| | | | | |
| 15 | 120 | Basic police training and | "Exhibit 1" | Objection. This |
| 15 16 | 120 | Basic police training and standards instruct that | "Exhibit 1" (Alfred Depo) at | Objection. This additional fact is |
| | 120 | standards instruct that deadly force should only | (Alfred Depo) at 41:24-42:2, | additional fact is immaterial and irrelevant |
| 16 | 120 | standards instruct that deadly force should only be used on the basis of an | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was |
| 16 17 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" | (Alfred Depo) at 41:24-42:2, | additional fact is immaterial and irrelevant |
| 16 17 18 | 120 | standards instruct that deadly force should only be used on the basis of an | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. |
| 16 17 18 19 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, |
| 16 17 18 19 20 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v.</i> |
| 16 17 18 19 20 21 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, |
| 16 17 18 19 20 21 22 23 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model |
| 16 17 18 19 20 21 22 23 24 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, |
| 16 17 18 19 20 21 22 23 24 25 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model |
| 16 17 18 19 20 21 22 23 24 25 26 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § |
| 16 17 18 19 20 21 22 23 24 25 | 120 | standards instruct that deadly force should only be used on the basis of an "objectively reasonable" belief that the suspect poses an immediate threat of death or serious bodily | (Alfred Depo) at 41:24-42:2, 43:13-18; DeFoe | additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) |

| 1 | | | | |
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| 2 | | | | Furthermore, DeFoe's conclusion is the result |
| 3 | | | | of the unreliable |
| 4 | | | | application of the facts, |
| 5 | | | | ignoring direct evidence |
| 6 | | | | to the contrary and |
| 7 | | | | invades the province of the jury. <i>See</i> |
| 8 | | | | Fed.R.Civ.Pro. 56; FRE |
| 9 | | | | 702 and 704. |
| | | | | |
| 10 | 121 | Police officers are trained | DeFoe Decl. at ¶ | Objection. This |
| 11 | 121 | that a threat of death or | 6(c) (citing PC | additional fact is |
| 12 | | serious injury is imminent | 835a); "Exhibit | immaterial and irrelevant |
| 13 | | when, based upon the | 1" (Alfred Depo) | to whether the force was |
| 14 | | totality of the | at 91:4-13. | justified under the |
| 15 | | circumstances, a | | totality of the |
| 16 | | reasonable officer in the same situation would | | circumstances. Fed.R.Evid. Rules 401, |
| 17 | | believe that a person has | | 402, 403; <i>Graham v</i> . |
| | | the present ability, | | Connor, 490 U.S. 386 |
| 18 | | opportunity, and apparent | | (1989); The Ninth |
| 19 | | intent to immediately | | Circuit Manual of Model |
| 20 | | cause death or serious | | Jury Instruction 9.25, |
| 21 | | bodily injury to the peace officer or another person. | | Unreasonable Seizure of Person (Excessive Force) |
| 22 | | officer of another person. | | pursuant to 42 U.S.C. § |
| 23 | | | | 1983. |
| 24 | | | | |
| 25 | | | | Furthermore, DeFoe's |
| | | | | conclusion is the result of the unreliable |
| 26 | | | | application of the facts, |
| 27 | | | | ignoring direct evidence |
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| does not justify the use of deadly force. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that from appearances, must be instantly confronted and addressed. The fear and addressed immaterial and irrelevation to whether the force we justified under the totality of the circumstances. Fed.R.Evid. Rules 401 402, 403; Graham v. Connor, 490 U.S. 386 (1989); The Ninth Circuit Manual of Moor Jury Instruction 9.25, Unreasonable Seizure Person (Excessive For pursuant to 42 U.S.C. 1983. Furthermore, DeFoe's conclusion is the result of the unreliable application of the facts ignoring direct evidence to the contrary and | 122 | Police standards instruct that subjective fear alone | DeFoe Decl. at ¶ 6(d). | to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704. Objection. This additional fact is |
|--|-----|--|------------------------|--|
| of the unreliable application of the facts ignoring direct evidence to the contrary and | | does not justify the use of deadly force. An imminent harm is not merely a fear of future harm, no matter how great the fear and no matter how great the likelihood of the harm, but is one that from appearances, must be instantly | | totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. |
| the jury. See | | | | of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE |

| 123 | Police officers are trained | DeFoe Decl. at ¶ | Objection. This |
|-----|-----------------------------|------------------|---------------------------|
| | that deadly force should | 6(i). | additional fact is |
| | only be used when no | | immaterial and irrelevant |
| | reasonable alternative | | to whether the force was |
| | measures are available. | | justified under the |
| | | | totality of the |
| | | | circumstances. |
| | | | Fed.R.Evid. Rules 401, |
| | | | 402, 403; Graham v. |
| | | | Connor, 490 U.S. 386 |
| | | | (1989); The Ninth |
| | | | Circuit Manual of Model |
| | | | Jury Instruction 9.25, |
| | | | Unreasonable Seizure of |
| | | | Person (Excessive Force) |
| | | | pursuant to 42 U.S.C. § |
| | | | 1983. |
| | | | |
| | | | Furthermore, DeFoe's |
| | | | conclusion is the result |
| | | | of the unreliable |
| | | | application of the facts, |
| | | | ignoring direct evidence |
| | | | to the contrary and |
| | | | invades the province of |
| | | | the jury. See |
| | | | Fed.R.Civ.Pro. 56; FRE |
| | | | 702 and 704. |
| | | | |
| 124 | Police officers are trained | DeFoe Decl. at ¶ | Objection. This |
| | to give a verbal warning | 6(j). | additional fact is |
| | prior to using deadly | | immaterial and irrelevant |
| | force. | | to whether the force was |
| | | | justified under the |
| | | | totality of the |
| | | | circumstances. |
| | | 70 | |

| | | | Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, Unreasonable Seizure of Person (Excessive Force) pursuant to 42 U.S.C. § 1983. Furthermore, DeFoe's conclusion is the result of the unreliable application of the facts, ignoring direct evidence to the contrary and invades the province of the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE 702 and 704. | |
|---|--|------------------------|--|--|
| 125 | Basic police training teaches that an overreaction in using deadly force is excessive force. | DeFoe Decl. at ¶ 6(h). | Objection. This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, | |
| 71 DEFENDANTS COUNTY OF SAN REPNADDING AND DEPUTY CHRISTOPHER AT ERED'S | | | | |

| 1 | | | | Unreasonable Seizure of |
|----|-----|--|--------------------|---|
| 2 | | | | Person (Excessive Force) |
| 3 | | | | pursuant to 42 U.S.C. § |
| 3 | | | | 1983. |
| 4 | | | | |
| 5 | | | | Furthermore, DeFoe's |
| 6 | | | | conclusion is the result |
| | | | | of the unreliable |
| 7 | | | | application of the facts, |
| 8 | | | | ignoring direct evidence |
| 9 | | | | to the contrary and |
| 10 | | | | invades the province of the jury. <i>See</i> |
| | | | | Fed.R.Civ.Pro. 56; FRE |
| 11 | | | | 702 and 704. |
| 12 | | | | 702 una 701. |
| 13 | 126 | Deputy Alfred violated | DeFoe Decl. at ¶ 9 | Objection. This |
| 14 | | basic police officer | " | additional fact is |
| | | training and standards | | immaterial and irrelevant |
| 15 | | with respect to the use of | | to whether the force was |
| 16 | | deadly force when he shot | | justified under the |
| 17 | | Mr. Barber while Mr. | | totality of the |
| 18 | | Barber occupied the | | circumstances. |
| | | driver seat of a vehicle. A | | Fed.R.Evid. Rules 401, |
| 19 | | reasonable officer acting | | 402, 403; <i>Graham v</i> . |
| 20 | | consistent with standard | | Connor, 490 U.S. 386 |
| 21 | | police practices would not | | (1989); The Ninth |
| 22 | | have used lethal force in | | Circuit Manual of Model |
| | | this situation. Mr. Barber | | Jury Instruction 9.25, Unreasonable Seizure of |
| 23 | | did not pose an immediate threat of death or serious | | Person (Excessive Force) |
| 24 | | bodily injury to Deputy | | pursuant to 42 U.S.C. § |
| 25 | | Alfred or to any other | | 1983. |
| | | person at the time of the | | 1,00. |
| 26 | | shots. At the time of the | | Furthermore, DeFoe's |
| 27 | | shooting, it was not the | | conclusion is the result |
| 28 | | | 72 | |

| | <u> </u> | | |
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| | case that any person was | | of the unreliable |
| | about to be run over by | | application of the facts, |
| | the vehicle with no | | ignoring direct evidence |
| | opportunity to get out of | | to the contrary and |
| | the way. | | invades the province of |
| | | | the jury. See |
| | | | Fed.R.Civ.Pro. 56; FRE |
| | | | 702 and 704. |
| | | | |
| 127 | From the standpoint of | DeFoe Decl. at ¶ | Objection. This |
| | police practices, including | 11. | additional fact is |
| | basic police training, | | immaterial and irrelevant |
| | POST standards, and the | | to whether the force was |
| | County of San | | justified under the |
| | Bernardino's own | | totality of the |
| | policies, Deputy Alfred's | | circumstances. |
| | use of deadly force was | | Fed.R.Evid. Rules 401, |
| | improper, inappropriate, | | 402, 403; Graham v. |
| | excessive and | | Connor, 490 U.S. 386 |
| | unreasonable, including | | (1989); The Ninth |
| | (but not limited to) for the | | Circuit Manual of Model |
| | following reasons: (1) this | | Jury Instruction 9.25, |
| | was not an immediate | | Unreasonable Seizure of |
| | defense of life situation; | | Person (Excessive Force) |
| | (2) subjective fear is | | pursuant to 42 U.S.C. § |
| | insufficient to justify a | | 1983. |
| | use of deadly force; (3) | | |
| | the shooting violated | | Furthermore, DeFoe's |
| | basic police training; (4) | | conclusion is the result |
| | Mr. Barber committed no | | of the unreliable |
| | crime involving the | | application of the facts, |
| | infliction of serious injury | | ignoring direct evidence |
| | or death; (5) Deputy | | to the contrary and |
| | Alfred could not justify | | invades the province of |
| | shooting Mr. Barber | | the jury. See |
| | under a fleeing felon | | Fed.R.Civ.Pro. 56; FRE |
| | · = | 72 | |

| | theory; (6) Mr. Barber was not armed with a gun or other weapon during this incident; (7) Mr. Barber never verbally threatened to harm Deputy Alfred; (8) Deputy Alfred had reasonable alternative measures other than shooting; (9) Deputy Alfred showed no reverence for human life when he fired at Mr. Barber; (10) police officers are trained that they must justify every shot they fire, and all six of Deputy Alfred's shots were unjustified. | | 702 and 704. |
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| Mone | <i>II</i> | | |
| 128 | Contrary to basic police training, Deputy Alfred testified that he has not been trained to give a verbal warning prior to using deadly force. | "Exhibit 1" (Alfred Depo) at 90:7-9; DeFoe Decl. at ¶ 6(j). | Objection. This additional fact is immaterial and irrelevant to whether the force was justified under the totality of the circumstances. Fed.R.Evid. Rules 401, 402, 403; <i>Graham v. Connor</i> , 490 U.S. 386 (1989); The Ninth Circuit Manual of Model Jury Instruction 9.25, |

DEFENDANTS COUNTY OF SAN BERNARDINO AND DEPUTY CHRISTOPHER ALFRED'S RESPONSE TO PLAINTIFF'S OBJECTIONS TO SEPARATE STATEMENT OF UNCONTROVERTED FACTS

| 1 | | | | Unreasonable Seizure of |
|----|-----|---|------------------|---------------------------------------|
| 2 | | | | Person (Excessive Force) |
| 3 | | | | pursuant to 42 U.S.C. § |
| | | | | 1983. |
| 4 | | | | Furthermore, DeFoe's |
| 5 | | | | conclusion is the result |
| 6 | | | | of the unreliable |
| 7 | | | | application of the facts, |
| 8 | | | | ignoring direct evidence |
| 9 | | | | to the contrary and |
| | | | | invades the province of |
| 10 | | | | the jury. See |
| 11 | | | | Fed.R.Civ.Pro. 56; FRE 702 and 704. |
| 12 | | | | 702 and 704. |
| 13 | 129 | Contrary to basic police | "Exhibit 1" | Objection. This |
| 14 | | training, Deputy Alfred | (Alfred Depo) at | additional fact is |
| 15 | | testified that he has not | 89:23-90:1; | immaterial and irrelevant |
| | | been trained that deadly | DeFoe Decl. at ¶ | to whether the force was |
| 16 | | force should only be used | 6(b). | justified under the |
| 17 | | if there is an immediate | | totality of the |
| 18 | | threat of death or serious bodily injury. | | circumstances. Fed.R.Evid. Rules 401, |
| 19 | | bodily injury. | | 402, 403; <i>Graham v</i> . |
| 20 | | | | Connor, 490 U.S. 386 |
| | | | | (1989); The Ninth |
| 21 | | | | Circuit Manual of Model |
| 22 | | | | Jury Instruction 9.25, |
| 23 | | | | Unreasonable Seizure of |
| 24 | | | | Person (Excessive Force) |
| 25 | | | | pursuant to 42 U.S.C. § 1983. |
| 26 | | | | |
| 27 | | | | Furthermore, DeFoe's |
| 28 | | | | conclusion is the result |
| 40 | | | 75 | |

| 1 | | | | of the unreliable |
|----|-----|---------------------------|---------------------|---|
| 2 | | | | application of the facts, |
| 3 | | | | ignoring direct evidence |
| | | | | to the contrary and |
| 4 | | | | invades the province of |
| 5 | | | | the jury. See |
| 6 | | | | Fed.R.Civ.Pro. 56; FRE 702 and 704. |
| 7 | | | | 702 and 704. |
| 8 | 130 | Contrary to basic police | "Exhibit 1" | Objection. This |
| 9 | | training, Deputy Alfred | (Alfred Depo) at | additional fact is |
| | | testified that he has not | 90:7-9; DeFoe | immaterial and irrelevant |
| 10 | | been trained that deadly | Decl. at \P 6(i). | to whether the force was |
| 11 | | force should only be used | | justified under the |
| 12 | | where there are no other | | totality of the circumstances. |
| 13 | | reasonable options. | | Fed.R.Evid. Rules 401, |
| 14 | | | | 402, 403; Graham v. |
| | | | | Connor, 490 U.S. 386 |
| 15 | | | | (1989); The Ninth |
| 16 | | | | Circuit Manual of Model |
| 17 | | | | Jury Instruction 9.25, |
| 18 | | | | Unreasonable Seizure of |
| | | | | Person (Excessive Force) |
| 19 | | | | pursuant to 42 U.S.C. § |
| 20 | | | | 1983. |
| 21 | | | | Furthermore, DeFoe's |
| 22 | | | | conclusion is the result |
| 23 | | | | of the unreliable |
| 24 | | | | application of the facts, |
| | | | | ignoring direct evidence |
| 25 | | | | to the contrary and |
| 26 | | | | invades the province of |
| 27 | | | | the jury. <i>See</i> Fed.R.Civ.Pro. 56; FRE |
| 28 | | | 76 | 1 Cd.R.CIV.I 10. 30, I'RE |
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| | | | | 702 and 704. | |
| | 131 | Alfred also testified that at the time of the incident, he understood that the County's policy directed that deputies "shall not" shoot at a moving vehicle, and that after the April 2021 shooting of Barber, the verbiage of the policy changed from "shall not" to "generally." | "Exhibit 1" (Alfred Depo) at 11:9-13:6. | Objection. Plaintiff is barred from using the change in the policy as evidence of the Defendants' liability (FRE 407.) | |
| | 132 | Deputy Alfred's interview in this case was not conducted until approximately two weeks after the shooting. | "Exhibit 1" (Alfred Depo) at 6:16-25. | Undisputed. | |

DATED: October 30, 2025 Respectfully submitted,

20 **MANNING & KASS** ELLROD, RAMIREZ, TRESTER LLP 21

By: /s/ Kayleigh Andersen

Eugene R. Ramirez 24 Kayleigh A. Andersen 25 Attorneys for Defendant, COUNTY OF

SAN BERNARDINO 26